

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 227 OF 2002

1. Jyoti W/o Tukaram Bhojne
Age : 22 Yrs., Occ. : Housewife,
R/o : C/o Gaikwad Giraram
Manikrao, Arihant Nagar,
Aurangabad.
2. Aadarsh S/o Tukaram Bhojne
Age : 2 ½ Yrs., Occ. : Education
u/g of his mother – Applicant
No. 1.

**..... APPLICANTS/
[ORIGINAL PETITIONERS]**

V E R S U S

Tukaram S/o Rambhau Bhojne
Age : 30 Yrs., Occ. : Service,
R/o : Dental hospital,
Medical College, Ghati,
Aurangabad.

**..... RESPONDENT/
[ORIGINAL RESPONDENT]**

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Mr. A.D.Aghav, Advocate for the Applicants.
Mr. Avinash Patil h/f Mr. S.P.Chapalgaonkar,
Advocate for the Respondent.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 4th FEBRUARY, 2015

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ORAL JUDGMENT :

1. Challenge in the present Revision Application is to the Judgment and Order dated 20/08/2002 passed by the learned Principal Judge, Family Court, Aurangabad in Petition No. E-395/2001, whereby the learned Judge of the Family Court dismissed the Petition filed on behalf of the present applicants for maintenance u/s 125 of the Code of Criminal Procedure.

2. Heard Mr. A.D.Aghav, the learned counsel for the applicants and Mr. Avinash Patil holding for Mr. S.P.Chapalgaonkar, the learned counsel for the respondent.

3. The present applicants are the wife and son of the respondent. Their relations are not denied.

4. On 18/06/2001, the present applicants approached to the Family Court with an application u/s 125

of the Code of Criminal Procedure. Their application was registered as Petition No. E-395/2001. The marriage between the applicant No. 1 and the non-applicant was solemnized on 21/05/1998. From their wedlock, the applicant No. 2 was borne and at the time of filing of the said application, the age of applicant No. 2 was 1 ½ years. They shall be referred hereinafter as per their position in the application u/s 125 of the Code of Criminal Procedure filed before the Court below.

5. It was stated by the applicants in the application that though for first few months, the applicant No. 1 was treated nicely, illegal demands were made by the non applicant and on non fulfillment of such illegal demand, she was subjected to cruelty. She was physically tortured by the non-applicant.

6. In paragraph No. 4 of the application, it has been specifically asserted by the applicant No. 1 that the non-applicant used to raise suspicion over her character and used to beat her on that count. Once she was administered poison by the non-applicant with an intention to kill her. The

applicant No. 1 was admitted in hospital. The cognizance of the said matter was taken by the police and the offence was registered against the non-applicant. It was further stated in her application that the non-applicant is working as Clerk in Govt. Dental Medical College at Aurangabad and he was having monthly salary of ₹ 6,000/- to ₹ 7,000/-. It was further stated that the non-applicant was also having agricultural land in Gangapur Taluka and was getting handsome income from the said agricultural land.

7. Due to the illtreatment, the applicant No. 1 was required to take shelter to her father's house. The applicant No. 2 was with her. No attempts were made by the non-applicant to provide maintenance to them. They were solely dependent on the income of applicant No. 1's father. It was further stated that the applicant No. 1 was not having any means of income. Therefore, she claim ₹ 1,500/- [Rupees One Thousand Five Hundred only] per month for each of them in the said Petition.

8. On being summoned, the non-applicant appeared before the learned Principal Judge of the Family

Court and filed his Written Statement. The Written Statement is at Exh. 5 on record. The sum and substance of the Written Statement is that the applicant No. 1 was never subjected to cruelty as alleged by the applicants. It was stated that the applicant No. 1 was the only child of her father and, therefore, she was unable to cohabit with her husband in joint family. It was further asserted in the Written Statement that she is in love with one Sanjay Garjekar, who is working in cinema theatre. It was further asserted in the Written Statement that on 14/02/2001, the applicant No. 1 came to the house in the night at late hours chewing Gootkha and upon enquiry, she disclosed that she had been to cinema theatre for movie. That time, the husband raised suspicion and searched in her purse, wherein some love letters were found. Thereafter, according to the non-applicant, she herself has consumed poison and she was admitted in the hospital.

9. Both the applicant No. 1 as well as the non-applicant entered into witness box. The learned trial Court rejected the claim of the applicants on the ground that it is the applicant No. 1 who is responsible for parting her

company from the non-applicant without any cause. According to the learned Court below, since the wife has parted company, therefore, she was not entitled to claim maintenance and, therefore, the said Petition is dismissed by the court below.

10. From record, it is clear that Section 498-A of the Indian Penal Code proceedings were initiated against the respondent by the applicant No. 1 on 18/01/2001. The First Information Report [hereinafter referred as 'F.I.R.' for brevity] was filed. The filing of the proceedings u/s 498-A of the Indian Penal Code are not denied by the respondent. In fact, he has admitted that the applicant No. 1 has filed Complaint against him for the offence punishable u/s 498-A of the Indian Penal Code and since then the applicant No. 1 is living separately. Thus, a candid admission is given by the respondent in his Examination-in-Chief itself.

11. The applicant No. 1 has specifically asserted during her evidence that the poison was administered to her. Her claim is supported by the contemporary document viz. the F.I.R. which she has lodged against the respondent.

On the contrary, the case of the respondent was that it is the applicant No. 1, who herself has consumed poison. If she, on her own, had consumed poison, it was the duty of the respondent to report the said matter to the police authority. It is not the case of the respondent that due to the attempt to commit suicide, any offence was registered against the wife by the police authorities.

12. In the Written Statement, specific plea is taken by the husband that the wife was in love with one Sanjay Garjekar, who was working as door keeper in the cinema theatre. Further, it was the specific plea taken by the husband that on 14/02/2001, love letters and obscene pictures were found in the purse of the applicant No. 1.

13. When such serious allegations were made by the non-applicant against applicant No. 1, it was incumbent on the part of the non-applicant to prove such allegations. These allegations are not proved against the applicant No. 1 by the respondent. Making serious allegations in the Written Statement, which remained to be proved by the non-applicant, that itself is a mental cruelty exerted by the

husband on the wife.

14. When the respondent was exerting cruelty to his wife, poison was administered to her, therefore, there will always be fear in the mind of the wife about her safety in the matrimonial house. Hence, if the wife is leaving the matrimonial house and is residing with his parents, that will not be the parting of company by the wife on her own without there being any sufficient cause. In the present case, sufficient cause was pointed out by the wife in her petition itself that due to the administration of poison, she was required to take shelter in her parental house. Therefore, the finding given by the learned Judge of the Family Court that without there being any cause or excuse, the wife parted company, is unsustainable.

15. Further, the non-applicant, being the father of applicant No. 2, was under obligation to maintain his son. No reasons were supplemented by the learned Judge of the Family Court as to why the learned court below has rejected the claim of the applicant No. 2.

16. According to the applicants, the monthly salary of the respondent was in between ₹ 6,000/- [Rupees Six Thousand only] to ₹ 7,000/- [Rupees Seven Thousand only]. In her evidence, she has specifically stated about the same. The respondent has stated in his evidence that he is taking take home salary of ₹ 2,988/- [Rupees Two Thousand Nine Hundred Eighty Eight only] per month. It was obligatory on the part of the respondent to disclose the exact salary. The take home salary indicates that there are certain deductions from his salary. What were those deductions, was the burden upon the respondent. The respondent has failed to discharge the said burden. It is admitted position that the husband was Clerk in the Government Medical Dental College at Aurangabad. When the applicant No. 1 was under cross examination, it was suggested to her by the non-applicant that he is having only 7 gunthas of land. It was the case of the respondent that the applicant No. 1 was not ready to reside in his joint family. That means, the respondent was member of joint family. Further, in the evidence, the applicant No. 1 has specifically stated that the non-applicant is having 20 – 30 Acres of agricultural land. In that view of the matter, it is absolutely clear that the non-applicant is

having means, who is able bodied person and is bound to maintain his wife and son. Apart from this, it is the obligation on the part of the husband to maintain his wife and son. In that view of the matter, I am of the considered view that the non-applicant can provide maintenance @ ₹ 1,500/- [Rupees One Thousand Five Hundred only] per month to each of the applicants.

17. Upshot of the aforesaid discussion leads me to pass the following order :

- (1) The present Revision Application is allowed.
- (2) The Judgment and Order dated 20/08/2002 passed by the learned Principal Judge, Family Court, Aurangabad in Petition No. E-395/2001 is hereby quashed and set aside.
- (3) The Petition No. E-395/2001 filed by the applicant No. 1 u/s 125 of the Code of Criminal Procedure is hereby allowed.

- (4) The non-applicant is directed to pay maintenance @ ₹ 1,500/- [Rupees One Thousand Five Hundred only] per month to each of the applicants from the date of filing of the Petition and shall continue to pay regularly.

[V.M.DESHPANDE, J.]

KNP/Crim. Revn. Apln. 227.2002 - [J]

