IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.

Criminal Revision Application No. 333 Of 2002.

Shaikh Ismail Kureshi s/o Abdul Raheman.
Age.: 30 Years., Occ.: Labourer.
R/o.: Abdilanagar, 1st Lane, Behind Pat,
Malegaon, Dist. Nashik. :: **Applicant.**

Versus.

Saleemabano s/o. Shaikh Ismail.
Age. : 25 Years., Occ.: Nil.
R/o.: Khandala, Tal. Vaijapur,
Dist. Aurangabad. :: **Non-Applicant**

Appearance =>

Mr. D.R. Kale, Advocate for the Applicant.

None present for the Non-Applicant.

CORAM : V.M. DESHPANDE, J.

DATE : 6th FEBRUARY, 2015.

ORAL JUDGMENT :-

Heard Mr. D.R. Kale, learned counsel for the Applicant. Present Criminal Revision Application is directed against the Judgment and Order dated 18th October, 2010 passed by the Judge, Family court, Aurangabad in Petition No.E. 359 Of 2002. By the said Judgment and Order, the learned Judge of court below directed present applicant – husband to pay monthly maintenance allowance @ Rs.400/- to the Non-Applicant from the date of Petition i.e. 13th June, 2002.

[2] The marriage of Non-Applicant and applicant was solemnized on 29th April, 1997. Parties are governed by Muslim Personal Law. The application under Section 125 of the Code of Criminal Procedure which was filed by the Non-Applicant for grant of maintenance shows that, during subsistence of their marriage, she was subjected to cruelty, at the hands of present applicant. The applicant – husband drove away his wife, requiring her to take shelter in her parents house. Though she was residing with her parents since last three years, no attempts were made by the applicant to provide any maintenance to her. In the application, it was pointed out by the wife that, the husband is having mutton shop and his daily income is Rs.400/-

[3] On being summoned, in the Family Court, Aurangabad, the applicant – husband appeared and filed his Written-Statement. The sum and substance of his Written-Statement was that, the applicant has given talaq to the Non-Applicant and, therefore, he is not responsible to pay the maintenance to his wife, therefore, application filed on behalf for the wife, was not tenable.

[4] The learned Judge of Family Court on the backdrop of the pleadings of the applicant in the Written-Statement found that, in view of the decision of this court in case of Dagadu s/o Chotu Pathan V/s. Rahimbi Dagadu Pathan & Ors., reported in 2002, ALL.M.R. (Cri.) 1230 that there was no divorce between the applicant and the Non-Applicant.

[5] Wife is not having any source of income, is admitted fact. Wife has right to claim maintenance if she is unable to maintain herself and if it is found that husband has willfully refused and neglected to maintain her.

[6] The learned Judge of family court, Aurangabad on appreciation of the pleadings and other material available on record, in my view, correctly reached to the conclusion that the Non-Applicant-wife has demonstrated that she is entitled for maintenance. Further though the maintenance allowance was claimed by the wife @ Rs.1500/- per month, the learned Judge of court below has awarded monthly maintenance allowance @ Rs.400/- only. The quantum of maintenance allowance is also meager one.

[7] Further it is worth to note that at the time of admission of present Criminal Revision Application, this court [Coram : N.V. Dabholkar, J.] on 14th February, 2003 had directed the applicant – husband to deposit Rs.400/- per month regularly towards the maintenance. The learned counsel for the applicant – husband is unable to state as to whether the applicant – husband is depositing Rs.400/- per month, in view of the directions given by this court. That fact itself demonstrates that the applicant is not depositing the amount. Overall survey of the case leads me to pass the following order **:-**

ORDER

(i) Criminal Revision Application fails and it is dismissed.

(ii) Rule discharged.

(V.M. DESHPANDE, J.)