

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1205 OF 2014

Nandkishor Sohanlal Sharma ...Applicant

versus

Vandana w/o Nandkishor Sharma and others ...Respondents

.....
Mr. S.B. Yawalkar, advocate for the applicant
Mrs. C. P. Kutti h/f Mr. P.N. advocate for respondent Nos. 1 to 3
.....

CORAM : V. K. JADHAV, J.

**Date of Reserving
the Order : 22.01.2016**

**Date of pronouncing
the Order: 28.01.2016**

ORDER:-

1. Being aggrieved by the judgment and order passed by the learned J.M.F.C. Bhusawal in Criminal Misc. Application No. 303 of 2008 thereby granting maintenance @ Rs.1000/- p.m. to the respondent-wife and Rs.750/- p.m. each to respondent Nos. 2 and 3 from the date of application and confirmed by the Sessions Court, Jalgaon in Criminal Revision Application No. 152 of 2012, the applicant-husband has preferred this criminal application.

2. Brief facts, giving rise to the present application, are as

follows:-

3. Respondent No.1 Vandana is legally wedded wife of applicant Nandkishor. After the marriage, respondent Vandana started cohabiting with applicant at Akot and at that time the applicant was living in joint family. For first two years of marriage, respondent Vandana was treated well, however, thereafter she was subjected to ill-treatment and cruelty on account of non fulfillment of unlawful demand of Rs.3.00 lacs for establishing new legal office and purchase of house. It is to be mentioned here that the applicant Nandkishor is lawyer by profession. Besides the ill-treatment extended to respondent-wife, the applicant was also suspecting about her character. On 23.11.2008, respondent-wife left the house of the applicant and started living with her parents. The respondent-wife has no independent source of income and applicant Nandkushor is in legal profession and earning Rs.50,000/- p.m. The respondent-wife has therefore, filed an application for grant of maintenance each for herself and her two children with the allegations that the applicant-husband neglected and refused to maintain them.

4. The applicant-husband denied the allegations of cruelty. According to him, respondent-wife is having hot temper nature and was insisting him to live separately though his financial condition was

not sound. Thus, one year after the marriage, at the instance of his wife Vandana, he started living separately from joint family in rented premises where they lived around three years together. However, because of his poor financial condition and mother's ill health, he was constrained to live in joint family with his wife. In the year 1998, Vandana gave birth to son Shubham and in the year 2003 she gave birth to daughter Kalyani. It is contended that till February, 2004 their marital life was happy and after death of mother of applicant-husband, there was interference from his mother-in-law, who was insisting him to start practice at Bhusawal leaving Akot permanently. On his refusal, the respondent-wife left his company in the month of May, 2004 and started residing with her parents alongwith children. In the month of April, 2006, respondent-wife again came for cohabitation, however, in the month of June, 2006, she left the company of applicant-husband due to his poor financial condition. In the month of June, 2008 Vandana again came to the house of applicant-husband for cohabitation, however, in the month of November, 2008 her mother took her back. The applicant-husband thus states that the respondent-wife has left his company without sufficient cause. He further contended that even false case for the offence punishable under Section 498-A of I.P.C. came to be filed against him by the respondent-wife. On all these grounds, he had strongly resisted the claim of respondent-wife for grant of

maintenance.

5. After hearing both sides and discussing the evidence, learned Magistrate allowed the said application as detailed above. The learned Sessions Judge has also confirmed the said judgment and order while disposing of Criminal Revision Application. Hence, this criminal application.

6. Learned counsel for the applicant-husband submits that the applicant-husband has never refused and neglected to maintain the respondent-wife. The respondent-wife has left the company of husband without any just and sufficient cause and therefore she has no right to claim maintenance. Even the respondent-wife has filed false case against the applicant for the offence punishable under Sections 498-A, 323 and 506 of I.P.C. and learned J.M.F.C. Bhusawal by order dated 2.5.2012 in R.C.C. No. 36 of 2009 acquitted the applicant-husband in the said offences. The husband has also filed petition under Section 9 of Hindu Marriage Act against the respondent-wife for restitution of conjugal rights. The said petition is decided in favour of the applicant-husband. Learned counsel submits that the trial court and even the Sessions Court have not given due weightage to the decree passed in the petition for restitution of conjugal rights and to the fact that the applicant-

husband came to be acquitted in the criminal case. The applicant husband has no sufficient means to pay separate maintenance to respondent-wife. It is further contended that though the applicant is a lawyer by profession, he does not have sufficient income from his profession. Learned counsel submits that the quantum of maintenance, as determined by the courts below, is exorbitant and excessive.

Learned counsel for the applicant-husband in order to substantiate his submissions places reliance on the judgments of the following cases:-

- i) Murlidhar Chintaman Waghmare vs. Smt. Pratibha Murlidhar Waghmare and Anr, reported in 1986 Cri. L. J. 1216,
- ii) Sayyed Jabbar Ali vs. Mst. Saheba Faitma, reported in 2002 Cri.L.J. 1332,
- iii) Ramkrushna Somaji Nadekar vs. Manjusha Ramkrushna Nadekar and Anr, reported in 2011 (3) Bom.C.R. (Cri.) 680,
- iv) Rabindra Nath Roy , reported in 1995 Cri.L.J. 1187

7. Learned counsel for the respondent-wife submits that the

respondent-wife is having son of 11 years old and daughter of 5 years old. There were two attempts on her part to resume for cohabitation with the applicant-husband. The applicant-husband refused to maintain them. The respondent-wife was subjected to ill-treatment on account of non fulfillment of unlawful demands as well as suspecting about her character. Thus, counsel further submits that respondent-wife has just cause to live separate and claim maintenance. The applicant-husband is practicing lawyer for more than 15 years. He has sufficient means to pay separate maintenance to the respondent-wife, who has no independent source of income, besides the fact that she has to maintain her two children and bear their educational and other expenses. Learned counsel submits that the learned Judge of the trial court has rightly granted maintenance which is confirmed by the Sessions Court in criminal revision application. Learned counsel submits that the judgment and decree passed in the petition for restitution of conjugal rights is exparte decree and respondent-wife has also challenged the said exparte decree. Learned counsel thus submits that there is no substance in the criminal application and the same is liable to be dismissed.

Learned counsel for the respondent in order to substantiate her submissions places reliance on the judgments of the following

cases:-

- i. Captain Ramesh Chander Kaushal vs. Mrs. Veena Kaushal and Ors., reported in AIR 1978 1807,
- ii. Pandharinath Sakharam Thube, reported in 1999 Cri.L.J. 2919,
- iii. Bishwanath Sarkar vs. Smt. Swapna Dey, reported in 2006 Cri.L.J. 1340,
- iv. Kola Keshava Reddy vs. Kola Anantha Lakshmi and others, reported in 1997 Cri.L.J. 933,
- v. Laxminarayaan Patnaik vs. Saudamini Patnaik, reported in 1993 Cri.L.J. 227

8. In this case, the relationship is not disputed. It has also not disputed that in the month of May, 2004 the respondent-wife left the house of her husband and again resumed to cohabit in the month of April 2006. Thereafter, in the month of June, 2006 the parties started residing separately and resumed co-habitation in the year 2008. However, since November, 2008 both are residing separately. The respondent-wife gave birth to daughter Kalyani when she was staying in joint family of applicant-husband. There were two attempts on the part of respondent-wife to resume co-habitation with the applicant husband. It appears from the evidence that the

respondent-wife has just and sufficient cause to live separate and claim separate maintenance. As it appears from the evidence that the applicant-husband has neglected and refused to maintain the respondent-wife and two children. Even during the course of arguments, when this Court has made query to learned counsel for the applicant-husband, it is stated that the applicant husband on his own has not paid any amount even to his children till this date for their maintenance. Except bare words of the applicant-husband that the respondent-wife is taking baking and cooking classes, there is nothing on record to corroborate his evidence. The respondent-wife has no independent source of income and she has to maintain herself and her two children. It is difficult to digest that even from the legal practice of more than 15 years the applicant-husband is not getting any income from his legal profession. Even assuming that he is getting minimum income from his legal profession, the trial Court has granted maintenance at the rate of Rs.1000/- to respondent-wife and Rs.750/- p.m. each to children.

9. Learned counsel for the applicant-husband submits that even though the civil court has passed decree for restitution of conjugal rights, the respondent-wife is not obeying the said decree. Thus, the respondent-wife is not entitled to claim separate maintenance in the light of decree for restitution of conjugal rights passed by the Civil

Court. Learned counsel further submits that though the respondent-wife has challenged the said decree for restitution of conjugal rights, her application for setting aside the said decree came to be dismissed in default. Learned counsel for the respondent-wife submits that the decree passed by the Civil Court under Section 9 of Hindu Marriage Act is an exparte decree.

10. So far as the decision of Criminal court thereby acquitting the applicant-husband for the offences punishable under Sections 498-A, 323, 506 of I.P.C. is concerned, it has no bearing so far as the application for grant of maintenance under Section 125 of Cr.P.C. is concerned. The applicant-husband even has neglected and refused to maintain his children. The trial court has granted amount of maintenance of Rs.2500/- p.m. in total to respondent wife and her two children. There is no reason to interfere in it.

11. In view of the above discussion, there is no substance, in the criminal application. The criminal application is dismissed. No costs.

(V. K. JADHAV, J.)

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