

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

CRIMINAL REVISION APPLICATION NO. 405 OF 2004

Sau. Rekha w/o Babasaheb Gadve,
Age: 25 years, Occ: Household,
R/o. N-7, B-1, 93, CIDCO, Aurangabad. ...Applicant

versus

Dr. Babasaheb s/o Nana Gadve,
Age: Major, Occ: Lecturer at
Chhatreapati Shahu Ayurvedic College,
Kanchanwadi, Aurangabad. ...Respondent

.....
Mr. R.S. Deshmukh, Advocate for applicant
Mr. R.F. Totla, Advocate for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 7th APRIL, 2016

ORAL JUDGMENT :

Pursuant to the contract of marriage on 23/03/2002 as per rituals of *Bauddha* religion, present applicant-wife stayed with the respondent-husband for about a month and left her matrimonial house.

2. It is not in dispute that both the husband and wife are Doctors.

3. The wife then filed proceedings under Section 125 of the

Code of Criminal Procedure seeking maintenance of Rs.1500/- per month, which came to be rejected by the Family Court, Aurangabad, by the judgment and order dated 13/09/2004.

4. Learned Counsel for the applicant, while trying to make out a case for exercising revisional jurisdiction of this Court, would urge that learned Family Court has recorded perverse findings. So as to substantiate his contention, he has taken me through the observations made by learned Family Court, whereby the findings are recorded that the present respondent cannot be blamed, so as to attribute that he was not ready and willing to maintain present applicant. He would then submit that, the perverse findings contrary to the evidence, are recorded by the Family Court.

5. So as to substantiate his contention, he has relied upon the judgment of the Apex Court in the matter of **Rajathi vs. C. Ganesan** reported in **(1999) SCC 326**. According to him, once the wife files a complaint before the police alleging cruelty, the fact that the issue of neglect to maintain has to be inferred in favour of applicant-wife. He would then submit that the case of the present applicant cannot be considered to be under Section 125(4) of the Code of Criminal Procedure, as according to him, default could be noticed from the conduct of the respondent-husband in the matter of

maintenance.

6. Per contra, learned Counsel for the respondent-husband submits that the conduct of present applicant is observed by the Family Court, particularly in the paragraph-19 of the judgment. According to him, the observations made therein speak the conduct of present applicant, which was formed to be basis for denying maintenance. He would then submit that present-respondent husband filed H.M.P. No. 14 of 2004 for restitution of conjugal rights, which was allowed, however, the said judgment and decree was not honoured by the applicant. According to him, H.M.P. No. 143 of 2008 was filed by the husband based on non honouring of the decree of restitution of conjugal rights and H.M.P. No. 143 of 2008 for divorce came to be allowed, against which the Family Court Appeal is pending before Division Bench of this Court being Family Court Appeal No. 1960 of 2009. He would then submit that present applicant filed Regular Criminal Case No. 565 of 2004 for the offence punishable under Section 498A of the Indian Penal Code against the present respondent-husband, which has resulted into acquittal, which was later on confirmed in appeal preferred by the present applicant.

7. In addition to above, so as to substantiate the case that the applicant is not entitled for maintenance and learned Family

Court was right in rejecting the same, learned Counsel for the respondent-husband submits that the applicant's qualification as a Doctor was taken into account. Learned Counsel for the respondent placed on record the document moved to the employer of the present applicant i.e. State Bank of Patiala, Branch Ramdas Tower, Pundliknagar, Garkheda, Aurangabad seeking employment details of the applicant and the said details were not provided by the employer. According to him, the present applicant is gainfully employee.

8. In this background, he submits that present revision is devoid of merits and be rejected.

9. At the outset, it is required to be noted that upon Court's query, learned Counsel for the applicant, upon instructions, has fairly concedes that since 2008 the applicant is in the employment of Nationalized Bank i.e. above named bank.

10. The said conduct on the part of the applicant of securing employment and not disclosing this Court during the course of hearing is required to be taken judicial note of. It is in response to the query raised by this Court, learned Counsel inquired with the applicant and as such, the above referred information about her employment was supplied during final hearing of the matter.

11. Apart from above, it is required to be noted that the present applicant appears to be inhabit of initiating the proceedings against the respondent, as is apparent from the proceedings bearing Regular Criminal Case No. 565 of 2004 for the prosecution under Section 498A of the Indian Penal Code, which has resulted into acquittal, which is confirmed in appeal, pendency of proceedings before this Court for divorce which was already decreed by the Court below and the present proceedings in relation to seeking maintenance of Rs. 1500/- per month.

12. Upon perusal of the order of the Family Court, it is required to be noted that present applicant has stayed only for few days, less than a month with the respondent.

13. It is brought on record that the applicant herself has left the matrimonial house and has chosen to live with her parents. Present respondent's efforts to bring back the applicant has not resulted into in a positive impact on the present applicant.

14. In this background, inference as is drawn by learned Court below, particularly having regard to the provisions of Section 125(4) of the Code of Criminal Procedure, in my opinion, does not

call for any interference. Though learned Counsel for the applicant has invited attention of this Court to the judgment of Apex Court in the matter of ***Rajathi*** (supra) so as to infer that only option in the compelling circumstances left with the applicant is to leave her matrimonial house, however, it is to be noted that in the present case, the Family Court has taken cumulative effect of the entire factual matrix as was brought before it and then has rightly reached to the conclusion that the applicant is duly qualified, there was no refusal on the part of respondent to maintain her and there was voluntary act on the part of the applicant to desert the respondent.

15. In this background, the judgment cited supra will be of hardly any assistance. As such, present criminal revision application is devoid of merits, same fails and stands dismissed.

[N.W. SAMBRE, J.]