

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

924 CRIMINAL APPLICATION NO. 2747 OF 2016
IN REVN/70/2016 WITH REVN/70/2016

JAVEDKHAN S/O. HAJI SHERKHAN
VERSUS
SHAHIN PARVEEN W/O. JAVEDKHAN

Shri. Dhananjay A. Naik, Advocate, for petitioner.

Shri. S.D. Hiwrekar, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 1 FEBRUARY 2017

ORDER:

1) The revision is filed to challenge the judgment and order of the Family Court Aurangabad given in Petition No.E-328/2014 which was filed for relief of maintenance by the respondent under section 125 of the Code of Criminal Procedure. Maintenance at the rate of Rs.3000/- per month is granted in favour of the present respondent. Criminal Application No.2747 of 2016 is filed by the petitioner Javedkhan for getting stay to the execution of the decision of the maintenance. Both the sides are heard.

2) It is the case of the wife that her marriage took place with present petitioner on 20-2-2011 and right from beginning illtreatment was given to her by asking her to bring Rs.2 lakh from her parents as present petitioner wanted to invest the amount in grocery business. She has contended that when demand was not met with, she was driven out of the matrimonial house after one year of the marriage. She has contended that she approached Women Grievance Redressal Forum Aurangabad but the husband did not turn up there and so she could not return to the matrimonial house.

3) It is the case of the wife that she is unable to maintain herself. She has no source of income. It is her case that the husband owns 5 acres of agricultural land having irrigation facility and he gets annual income of Rs. five lakh. It is her case that the husband is also in grocery business and from that business he gets Rs.20,000/- to 25,000/- per month as the income. She had claimed maintenance at the rate of Rs.5,000/- per month.

4) The present petitioner contested the matter by filing say. He admitted the relationship. He denied the allegation that he had made demand of money and on that count illtreatment was given to the wife. He contended that he had made many attempts to bring the wife back to the matrimonial house but she refused to return to the matrimonial house. He contended that she is living separate from him on her own and so she is not entitled to any maintenance. It is his case that he had made application to the religious officer, Imatul Shariat, against the wife to obtain direction against wife to return to the matrimonial house but she did not give proper response in the said proceeding and she filed proceeding under section 498-A of the Indian Penal Code against him. It is his case that, the wife did not perform matrimonial obligations and she was insisting him that he should stay with her parents in Aurangabad. He contended that as he is required to maintain his parents he could not accept this demand and so the wife is living separate.

5) The wife examined herself and she examined her elder brother. On the other hand, the husband

examined himself and also examined his brother. The wife gave evidence as per the aforesaid contentions made in the application. It is not disputed that the wife had filed proceeding for offence punishable under section 498-A of the Indian Penal Code. The submissions made show that after filing of the case, the husband withdrew the proceeding which was filed by him for restitution of conjugal right. Thus, there is no possibility of the wife returning to the matrimonial house and she is blaming the husband for that.

6) It is not the case of the husband that the parents of the wife are very rich or she has separate source of income. The parties are Muslims. In view of these circumstances it does not look probable that the wife is living separate on her own.

7) It appears that suggestion was given to the wife in the cross-examination that the agricultural land is standing in the name of the father of the present petitioner. This circumstance shows that the family of the husband owns agricultural land though he has contended

that he is doing labour work to earn livelihood. As there is immovable property it can be said that nobody is depending on the petitioner except his wife. Proceeding was filed in the year 2014 and it came to be decided in January 2016. Even a labour earns more than Rs.300/- per day these days. In view of these circumstances the monthly maintenance at the rate of Rs.3000/- is not on higher side. This Court holds that it is not possible to interfere in the decision given by the Family Court against the petitioner. In the result, the revision application stands dismissed. Criminal application is disposed of.

Sd/-
(T.V. NALAWADE, J.)

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