

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 60 OF 2015**

Mr. Rajesh Tukaram Kasale

..Petitioner

Vs.

The State of Maharashtra & Ors

..Respondents

Mr. Akshay Kapadia for the Petitioner

Mr. Suresh Mali a/w Mr. Vishnu Chaudhari for the Respondent Nos.2 & 3

CORAM : R. M. SAVANT, J.

DATE : 31st JANUARY, 2017

P.C.

1 The Revisionary Jurisdiction of this court is invoked against the order dated 2-12-2014 passed by the Learned Judge of the Family Court No.4 Mumbai, by which order the Petition filed by the Respondent No.2 herein being E-358/10/J under Section 125 of the Criminal Procedure Code, came to be allowed and the Petitioner was directed to pay Rs.5000/- per month to the Respondent No.2 i.e. wife and Rs.5000/- per month to the Petitioner No.3 i.e. son, as maintenance.

2 The Petitioner and the Respondent No.2 were married on 12-5-2001. Out of the said wedlock a son - Ritik i.e. Respondent No.3 herein is born to the parties. It seems that the Respondent No.2 along with the Respondent No.3 left the matrimonial house some time in August 2004 and that the parties are estranged and are living separately since then. The

Respondent No.2 filed the instant Petition being E-358/10/J claiming maintenance. In the Petition averments relating to the reason why the Respondent No.2 was required to leave the matrimonial house have been mentioned. In paragraph 8 it is averred that after their marriage, the Petitioner herein and his parents started showing their true colours. In the said paragraph the allegations in respect of the alleged vices of the Petitioner have been referred to. Thereafter in paragraph 10 the averments relating to the mental torture of the Respondent No.2 on account of the parents of the Petitioner have been mentioned. In paragraph 13, it has been averred that after sometime the Respondent No.2 became aware of the alleged extra marital affair of the Petitioner with a married woman having two children. It is also averred that the expenses for the delivery of the child of the Respondent No.2 were borne by the parents of the Respondent No.2 and that the Petitioner herein did not spend a single farthing. Thereafter it is averred in paragraph 15 that the Petitioner herein attempted to kill the Respondent No.2 and their son Ritik. It is further averred that the Petitioner herein forced the Respondent No.2 to give divorce and expressed his desire to marry the lady with whom he is having illicit relations. It is thereafter averred in paragraph 16 that the Respondent No.2 in the year 2004 has been thrown out from the matrimonial house without any rhyme or reason and neglected the Petitioner, avoided to maintain her and Master Ritik. It is further averred by the Respondent No.2 that she has made several efforts to save the marital life but the Petitioner and

her parents have taken an adamant stand. The Respondent No.2 has sought maintenance in the sum of Rs.5000/- for herself and Rs.5000/- for the son-Ritik.

3 The Petitioner herein who is the Respondent in the said Petition filed his Written Statement and in the said Written Statement denied the allegations made by the Petitioner i.e. the Respondent No.2 herein. The Petitioner denied that he or his parents had thrown out the Respondent No.2 from the matrimonial house. It was stated that the Petitioner is always ready and willing to reside with the Respondent No.2, however it the Respondent No.2 who has declined to come back to the matrimonial house. The fact that he is earning Rs.25,000/- per month has been denied by the Petitioner. It is his case that he is working in the office of the Superintending Engineer, PWD and drawing salary of Rs.15,000/- per month. It his case that he has made various efforts to save their marital life but the Respondent No.2 and her parents have not responded commensurately.

4 The Learned Judge of the Family Court, Mumbai adjudicated upon the said Petition and by order dated 18-1-2013 partly allowed the said Marriage Petition. The Learned Judge granted interim maintenance in the sum of Rs.4000/- to the Respondent No.2 herein and Rs.2000/- per month to the Respondent No.3 herein i.e. son Ritik. The Learned Judge also granted a

sum of Rs.2000/- separately towards costs.

5 The said order dated 18-1-2013 was challenged by the Petitioner herein by filing Criminal Revision Application No.385 of 2013 in this Court. A Learned Single Judge of this Court by order dated 22-8-2014 allowed the said Revision Application and set aside the order dated 18-1-2013 passed by the Learned Judge of the Family Court and remanded the matter back to the Learned Judge of the Family Court for a denovo consideration of the Petition. According to the Learned Judge a remand was necessary in view of the fact that the most important aspect as to whether the Respondent No.2 had a just reason to stay separately from the Petitioner has not been taken into consideration by the Learned Judge of the Family Court whilst deciding the Petition filed by the Respondent No.2 under Section 125 of the CrPC. The Learned Judge was of the view that the said issue was the only important aspect of the matter so as to arrive at a decision to award maintenance to the Respondent No.2. The Learned Single Judge accordingly by his order dated 22-8-2014 set aside the order dated 18-1-2013 passed by the Learned Judge of the Family Court and remanded the matter back to the Family Court for a denovo consideration.

6 On remand, the Respondent No.2 herein i.e. wife filed her affidavit of evidence at Exhibit 19. She was cross-examined on 18-11-2014.

She has reiterated the case put up by her in the Petition. In her evidence, she admitted that she refused to return with the Petitioner to the matrimonial house as she had received telephonic information that the Petitioner has kept a woman with whom he has illicit relations. It seems that there are admissions in her evidence that in respect of cruelty meted out to her she has not filed complaint. It has also come in her evidence that the police refused to record her complaint in respect of the conduct of the Petitioner and his consumption of liquor and consequent misbehaviour towards her and the child under the influence of alcohol.

7 The Learned Judge of the Family Court was of the view that it could not be expected of a woman to file complaint with the police as she would certainly first try to salvage her marriage though situation might have become unbearable for her. The Learned Judge of the Family Court further observed that the person who has no source of income and no property in her name and no roof over her head would undoubtedly submit to all this ill-treatment. The Learned Judge of the Family Court accordingly drew a conclusion that except for the reasons as above, there was no reason for the Respondent No.2 to walk out of the matrimonial house with the child and go to reside in her parental home. The Learned Judge of the Family Court further observed that though it is the case of the Petitioner that he was willing to take back the Respondent No.2, in support of which the Petitioner has relied upon

the letters addressed to the Mumbai Women's Redressal Cell the said attempt was not genuine. The Learned Judge of the Family Court observed that the Petitioner has not provided any financial assistance to the Respondent No.2 since the Respondent No.2 started residing with her parents. The Learned Judge of the Family Court therefore posed the question that if the Petitioner really wanted his wife and child back why he has not spent a single rupee for maintenance of the wife and child till the said date. The Learned Judge of the Family Court has observed that the child Ritik is now 12 years old and is studying in 7th Std., and all these years the Respondent No.2 wife who is taking care of the child. In so far as the alleged illicit relations that the Petitioner is having with another woman, the Learned Judge was of the view that it would be very difficult to get any direct evidence in that regard. The Learned Judge of the Family Court observed that having regard to the fact that the husband is a drunkard who has not supported his wife, it cannot be expected that the wife lives in a house where apart from her husband, her in-laws also have been ill-treating her. The Learned Judge of the Family Court therefore observed that the story put up by the Respondent No.2 for not residing in the matrimonial house deserves to be accepted and a finding is required to be recorded that the Petitioner herein has neglected and has refused to maintain the Respondent No.2 and the child.

8 In so far as the amount of maintenance is concerned, the Learned

Judge adverted to the fact that the Petitioner has capability to spend Rs.18,000/- towards personal expenses, having regard to the said fact, the wife and the son would be entitled to the same standard as the Petitioner. The Learned Judge therefore deemed it appropriate to fix Rs.5000/- each per month as maintenance for the Respondent Nos.2 and 3. The Learned Judge of the Family Court as indicated above has therefore by the impugned order dated 2-12-2014 allowed the Petition filed under Section 125 of the CrPC and granted maintenance to the extent mentioned hereinabove.

8 The Learned Counsel appearing on behalf of the Petitioner Mr. Kapadia would contend that the Respondent No.2 has not proved her case that she was forced to leave the matrimonial house. It was the contention of the Learned Counsel for the Petitioner that the Petitioner is always ready and willing to take back the Respondent Nos.2 and 3 but it is the Respondent No.2 who is keeping herself away from the matrimonial house.

9 In my view, it is not possible to accept the said contention urged on behalf of the Petitioner. As indicated above, in the earlier part of this order, the parties have led evidence in respect of their respective assertions. The Respondent No.2 had filed her affidavit of evidence Exhibit 19 and has been cross-examined on behalf of the Petitioner. The Petitioner has also led his evidence and has been cross-examined. On the basis of the material on record

which includes the oral evidence. The Learned Judge of the Family Court has deemed it fit to accept the case of the Respondent No.2 whilst disbelieving the case of the Petitioner.

10 In my view, having regard to the material on record and the findings recorded by the Learned Judge of the Family Court, there is no error of jurisdiction in fixing the maintenance at Rs.5000/- each to the Respondent Nos.2 and 3. The maintenance granted cannot be said to be excessive or exorbitant considering the cost of living in today's times. No case for exercise of the Revisionary Jurisdiction of this Court is therefore made out. The Revision Application is accordingly dismissed.

[R.M.SAVANT, J]