

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 222 OF 2014**

Mrs. Shaheen Mohd. Afzal Ansari
Aged 30 Years, Occu-Housewife,
Residing at Mapkhan Nagar, Mapchan
Chawl No.6, Room No.3, Marol Naka,
Andheri (E), Mumbai – 400 059.

.... APPLICANT

V E R S U S

1. Mohammed Afzal Islam Ansari
Aged 40 years, Occu-unemployed, At
present residing at 15, Oxford Chambers,
Clare Road, Byculla, Mumbai – 400 008.

2. The State of Maharashtra

.... RESPONDENTS

APPEARANCE :

Mr. Saeed Akhtar a/w Hitesh Anil Thorat for Applicant.

Mrs. Poonam Ankleshwaria for Respondent No.1.

CORAM : K. K. TATED, J.

DATE : JULY 27, 2017.

JUDGMENT

. Heard learned Counsel for parties.

2. By this Criminal Revision Application, the Applicant – wife challenges the order dated 5th June, 2013 passed by the Judge, 6th Family Court, Mumbai below Exhibit 2 in Petition No. E – 419 of 2010 and the Judgment dated 2nd January, 2014 in Petition No. E-419 of 2010

declining to grant maintenance charges to the Applicant – wife and awarded Rs. 1500/- per month to the minor son Hashim, though the claim was Rs. 15,000/- per month.

3. In the present proceedings, the Applicant – wife filed Petition under Section 125 (1) (a) (b) of the Code of Criminal Procedure, 1973 against the Respondent – husband claiming maintenance at the rate of Rs. 40,000/- per month for herself and her minor child. That Petition was vehemently opposed by the Respondent – husband by filing written statement dated 22nd November, 2009. It was the contention of the Respondent – husband before the Family Court that Applicant – wife is in service and earning near about Rs. 8000/- per month, and therefore, she is not entitled for claiming maintenance from the Respondent – husband. That impugned order was challenged by the Applicant – wife by preferring the present Revision Application.

4. The learned Counsel Mr. Saeed Akhtar appearing on behalf of Applicant – wife submit that the Family Court erred in coming to the conclusion that the Applicant – wife is not entitled to any maintenance charges just because at that time she was earning. The court below also erred in coming to the conclusion that minor son was entitled only to Rs. 1500/- per month, though the Applicant – wife claimed higher amount. He submits that the marriage between Applicant – wife and Respondent – husband was performed on 1st December, 2007. Thereafter the son Hashim was begotten out of the said wedlock on 20th June, 2009. Because of some dispute, Applicant – wife started residing separately. For want of source of income, she had filed the Application under Section 125 of the said Code for maintenance. He submits that even the

Respondent – husband failed and neglected to provide the accommodation to the Applicant. He further submits that the court below failed to consider the fact that during the pendency of the present proceedings, Respondent – husband performed the second marriage and is staying with the second wife.

5. The learned Counsel for the Applicant – wife submits that the Respondent – husband in his reply/written statement made incorrect statement of facts. He submits that the Applicant in her application for maintenance specifically stated that the Respondent – husband was earning more than Rs. 6,00,000/- per month from his family business. In spite of that, the court below failed to grant maintenance in favour of the Applicant – wife only on the ground that she is also working. He submits that it constrained the Applicant – wife to work for her survival. He submits that though the Applicant is working with Courier Company, but her service is on temporary basis and she is getting very meager amount towards the salary. He submits that the Family Court failed to consider the fact that it is the duty of the husband to maintain the wife and children.

6. The learned Counsel for Applicant - wife submits that the Respondent – husband in his Affidavit-in-reply specifically admitted that he had his family business and ancestral property also. In spite of that, the Family Court erred in coming to the conclusion that the Applicant – wife is not entitled to any maintenance charges under Section 125 of the said Code, only the minor son is entitled to Rs. 1500/- per month. He submits that the Family Court failed to consider the fact that Rs. 1500/- per month means Rs. 50/- per day. To maintain a school going child, in

Rs. 50/- per day is impossible. He submits that Applicant being mother, she has to take care of her child, and therefore, she is giving education to the minor son in good school and for that purpose she is spending from her own. He submits that Respondent – husband being the father of that minor child, it is his duty and obligation to contribute some amount for the minor son's maintenance also.

7. On the basis of these submissions, the learned Counsel Mr. Saeed Akhtar appearing on behalf of Applicant – wife submit that by modifying the impugned order dated 2nd January, 2014, this Hon'ble Court be pleased to direct the Respondent – husband to pay the sum of Rs. 25,000/- per month with effect from the date of Application i.e. 10th September, 2010 and Rs. 30,000/- per month to the minor son. He submits that if the present Revision Application is not allowed, irreparable loss will be caused to the Applicant – wife.

8. On the other hand, learned Counsel Ms. Poonam Ankaleshwaria appearing on behalf of Respondent – husband vehemently opposed the present Revision Application. She submits that the Family Court after considering the evidence on record and reply/written statement filed by the Respondent – husband has rightly held that Applicant – wife is not entitled to any maintenance charges, because during that period the Applicant – wife was working with the Courier Company. She submits that Respondent – husband placed on record the documents to show that the Applicant was working and she was earning sufficient to maintain herself as well as the minor son. She submits that the Applicant has made several allegations in her Application for maintenance that Respondent – husband is doing

business on a large scale. His income is more than Rs. 6,00,000/- per month and he is holding some flats in Mumbai is absolutely incorrect. She submits that in support of this contention, Applicant – wife failed and neglected to file document on record. She submits that admittedly, the Respondent – husband was working with Star Packaging and he was getting Rs. 5300/- per month. In support of this contention, the Respondent placed on record the certificate issued by the Star Packaging dated 1st February, 2012.

9. The learned Counsel for Respondent – husband submits that in the present proceeding the Applicant – wife is not entitled to any maintenance charges at all. She submits that the Respondent – husband filed Petition No. A-1754 of 2009 before the Family Court, Mumbai at Bandra under Section 281 of Mohammedan Law for restitution of conjugal rights. She submits that the Family Court after considering the evidence on record held that Respondent – husband always ready and willing to maintain the Applicant – wife and in spite of that, she was not ready to join the company of Respondent – husband. She submits that though the Family Court has passed the order on 2nd January, 2014 under Section 281 of Mahomedan Law for restitution of conjugal rights, Applicant – wife failed and neglected to comply the same.

10. The learned Counsel for Respondent – husband submit that as per Section 125 of the Code of Criminal Procedure, Applicant – wife is entitled to maintenance charges in case a person who is having sufficient means neglects or refuses to maintain a wife, who is unable to maintain herself. She submits that in the present proceedings admittedly, the Applicant – wife was working at that time and at present she is also

working. She further submits that it is crystal clear from the Judgment dated 2nd January, 2014 passed by the Family Court in Petition No. A-1754 of 2009 under Section 281 of Mohammedan Law for restitution of conjugal rights that Respondent – husband never refused to maintain his wife. She submits that the Applicant – wife on her own left the matrimonial home and started residing separately, and therefore, there is no question of claiming any maintenance under Section 125 of the said Code from the Respondent – husband.

11. In support of this contention, the learned Counsel for Respondent – husband relies on paragraph nos. 14 and 15 of the impugned Judgment dated 2nd January, 2014 which read thus :

“14. Shaheen i.e. wife has specifically mentioned in her written statement that she was requesting to arrange separate accommodation. Learned Advocate for parties informed that the parties are having dispute only on the point of residence only. At the time of argument, Shaheen i.e. wife showed her willingness to stay in the joint family house. Mohammed Afzal was ready to provide separate house.

15. The evidence shows that the parties cohabited only for 18 months. There was no serious dispute between them. They are separated after 18 months from the date of marriage. In last four years various proceedings were filed. It is unfortunate to note that the pleadings and the relief claimed are contradictory. The husband has pleaded cruelty and claimed relief of restitution of conjugal rights. Respondent

has not denied the allegations leveled against her. On the contrary, she is willing to cohabit with the petitioner husband on certain conditions.”

She submits that bare reading of these two paragraphs of impugned judgment clearly shows that Respondent - husband never deserted to the Applicant – wife. Therefore, there is no substance in the present Revision Application. Same is required to be dismissed.

12. I have heard both the Counsel at length.

13. On the basis of pleading and submissions made by both the Counsels, following points arise for my consideration in the present Revision Application.

1. *Whether the Applicant – wife is entitled to claim maintenance charges from the Respondent – husband under Section 125 of the said Code on the facts and circumstances of the present case.*

2. *Whether it is the duty of Respondent – father to pay maintenance at the rate of Rs. 30,000/- per month to the Applicant No. 2 – minor son.*

14. It is to be noted that as per Section 125 of the Code of Criminal Procedure it is crystal clear that if the husband, who is having sufficient means to that effect, failed and neglected to maintain his wife, in that case only the wife is entitled to maintenance charges under Section 125 of the said Code. In the present proceedings Applicant – wife left the Respondent – husband's company. This can be crystal clear from the order dated 2nd January, 2014 passed by the Family Court in Petition No. A-1754 of 2009 which was for restitution of conjugal rights

under Section 281 of Mohammedan Law. Though the Family Court by order dated 2nd January, 2014 has directed the Applicant – wife to reconstitute the conjugal rights with Respondent – husband, she failed and neglected to do so. This itself shows that she herself left the Respondent's company, and therefore, she is not entitled to any maintenance charges.

15. In the present proceedings, the minor son Hashim is six years old. It is the duty of the parents to maintain their child. In the present proceedings, at present the custody of the child is with Applicant – wife. She is looking after him. She is bearing the minor's expenses for education, cloth, eating and day-to-day expenses. In any case, as per the evidence on record, the Applicant's income is not more than Rs. 5000/- to Rs. 6000/- per month. Presently, she is residing with her parents. Whereas during the course of argument, the learned Counsel Ms. Ankaleshwaria appearing on behalf of Respondent – husband admitted that at present Respondent – husband is earning Rs. 10,000/- per month by way of salary.

16. Considering the background from which family the Respondent – husband is belonging, it is crystal clear that he is also participating and/or helping in their family business. Whatever may be, in any case, it is the duty of the father to look after the day-to-day needs of his son. The Family Court granted only Rs. 1500/- per month to the son. It is very meager amount. It is difficult in Mumbai city to survive even a minor child at the rate of Rs. 50/- per day. Considering the fact that Applicant – mother and Respondent – father both of them are earning, it is their duty to take proper care of day-to-day need of the

minor child. Hence, I am of the opinion that the Respondent – father must pay the sum of Rs. 3500/- per month instead of Rs. 1500/- as awarded by the Family Court by impugned order dated 2nd January, 2014 from the date of Application i.e. 10th September, 2010. Maintenance is awarded from the date of application because minor was entitled to the said amount when application was filed in Family Court itself. Hence, the following order.

ORDER

- (1) Criminal Revision Application is partly allowed.
- (2) Respondent No.1 to pay sum of Rs. 3500/- per month on or before 10th of each month for the minor child – Hashim by way of maintenance charges from the date of application dated 10th September, 2010 filed by them before the Family Court, Mumbai at Bandra.
- (3) Arrears of maintenance charges upto July-2017 to be cleared within one year by monthly equal installment.
- (4) Respondent No.1 to pay maintenance charges towards the minor child – Hashim in Applicant's Bank Account No. 013200100019554, I.F.S.C. Code No. SRCB0000013 in The Saraswat Co-operative Bank Ltd. Rock, Viibur, Marol Maroshi Road, Marol, Mumbai – 400 059, till he attained the age of majority.
- (5) Cost of Criminal Revision Application Rs. 3000/- to be paid by Respondent No.1 within one month.

(K.K.TATED, J.)