

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

CRIMINAL REVISION APPLICATION NO.41 OF 2017

Amit s/o Suryakant Bhusare,
Age 38 years, Occu. Labour,
R/o Ganesh Nagar, Ambejogai,
Taluka Ambejogai, Dist. Beed

.. The Petitioner

Versus

1. Rupali w/o Amit Bhusare,
Age 34 years, Occu. Household
2. Ku. Anuksha d/o Amit Bhusare,
Age 7 years, Occu. Education
3. Soham s/o Amit Bhusare,
Age 5 years, Occu. Education
All r/o at present Sahyog Nagar,
Nanded
(Respondents no.2 and 3 are
minors under guardianship of
respondent no.1 i.e. real mother)

.. The Respondents

Mr R.V. Gore, Advocate for petitioner
Mr V.C. Patil, Advocate h/f MR U.B. Bondar, Advocate for respondents
no.1 to 3

CORAM : A.M. DHAVALÉ, J.

**DATE OF RESERVING
THE ORDER : 18th June 2018**

**DATE OF PRONOUNCING
THE ORDER : 21st June 2018**

ORDER

1. The revision petitioner assails the judgment of learned Judge, Family Court, Nanded dated 10.1.2017 under Section 125 of Cr.P.C. passed in Petition No.E-86/2015, whereby the petitioner herein has been directed to pay monthly maintenance allowance of Rs.3,000/- for his wife Rupali and Rs.2,000/- per month for his children Anushka and Soham each from the date of application.

2. Respondent no.1 Rupali married to the petitioner on 1.2.2009 at Nanded as per Hindu rites and thereafter they started co-habiting together at Ambejogai. The couple was blessed with two children Anushka and Soham, aged 5 years and 3 years at the time of filing petition in 2015. Respondent no.1 Rupali alleged that the petitioner, after two months from the marriage subjected her to ill-treatment and dowry demand of Rs.1 lakh. On 1.1.2011, she was beaten by the petitioner and his family members without reason and ousted her from the matrimonial house. She lodged F.I.R. under Section 498-A of Indian Penal Code and other offences at Bhagyanagar Police Station, Nanded. She also filed M.C.A. No.23 of 2011 before the Judicial Magistrate, First Class, Nanded. There was compromise between the parties before the Lok-Nyayalaya on 11.3.2011 and she resumed co-habitation. Son Soham was begotten to her after resumption of co-habitation. Again, there was ill-treatment. She and her children were neglected and refused to be maintained by the petitioner. Hence, she is residing with her parents at Nanded. She is unable to maintain herself. Her husband, the petitioner herein was having his own house and business of ready-made garments in the name and style as 'Payal Collection' at Ambejogai. He was earning Rs.40,000/- per month. He was having agricultural land yielding income of Rs.5 lakhs per annum. Hence, she claimed maintenance for herself and children at the rate of Rs.5,000/- each.

3. The respondent (petitioner herein) by reply Exh.13 denied the allegations of ill-treatment and dowry demands or assaulting by him and his relatives. He that Rupali was ousted by him and his family

members at any time. He claimed that Rupali had filed complaint at police station due to misunderstanding and has stated so in criminal case. During the compromise terms, due to love and affection, the petitioner herein agreed to reside separately from his parents at Ambejogai. After resumption of co-habitation also there was no ill-treatment. He showed willingness to resume co-habitation and readiness to live together at Ambejogai as per will and wish of Rupali. He had taken on lease a house at Rs.1,500/- per month.

4. Amit specifically claimed that his wife Rupali was selected as Miss Yashwant and Miss Nanded and she was darling of her parents. She was very much attached to Nanded and she left his company on her own without any reason. She was running a beauty parlour as 'Rupali Beauty Parlour' and was earning Rs.25,000/- per month. The petitioner stated that he is doing a private job earning Rs.3,000/- per month. He has filed petition for restitution of conjugal rights before the Civil Judge, Senior Division, Ambejogai and was ready to take back respondent no.1. Respondent no.1 Rupali was arrogant lady. She used to insult him and his parents. She used to talk in filthy language even on phone. The petitioner was only son of his parents who were old and were not keeping good health. Still respondent no.1 Rupali was asking him to leave their company and live with her at Nanded. Hence, the petition be dismissed.

5. Rupali examined herself while the petitioner Amit examined himself. The petitioner herein produced audio recorded conversation between him and his wife on phone several times. The learned Judge, Family Court allowed the petition and granted maintenance as

referred above. Hence this revision.

6. Shri R.V. Gore, learned Advocate for the petitioner argued that respondent no.1 Rupali has left the company of the petitioner on her own without any reason. She was talking arrogantly and abusively with the petitioner and the audio recorded conversation produced before the Court under Section 65 of Evidence Act shows her behaviour and attitude. She was not willing to stay with the petitioner even when offers were made at the time of her cross-examination. She has source of income and, therefore, the application should have been rejected to the extent of respondent no.1. Mr Gore argued that the petitioner was residing separately from his father. Respondent no.1 has not produced documentary evidence about his source of income. The petitioner has produced certificate showing that he was serving on a salary of Rs.3,000/- per month. Hence, the maintenance granted to the children is also excessive. He showed willingness to pay maintenance to the children as granted.

7. Per contra, learned Advocate Mr V.C. Patil, holding for Mr U.B. Bondar for the respondents submitted that the learned trial Judge has properly appreciated the evidence. The petitioner was not ready and willing to resume co-habitation. He had withdrawn the petition for restitution of conjugal rights. Even in the Court there were efforts of conciliation but the petitioner has refused to resume co-habitation and has claimed divorce by mutual consent. He argued that the petitioner is only son of his parents and his parents are having own house and a business in ready-made garments and land of 4 acres and 17 gunthas. They are financially sound and the maintenance granted is according

to the status of the parties. Hence, no interference is called for.

8. The points for my consideration with my findings are as under:

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| (I) | Whether the impugned order of the Family Court suffers from illegality or perversity and needs any interference ? | ..Partly in the affirmative |
| (II) | What order ? | ..The revision is partly allowed |

9. The parties have led evidence as per their pleadings. It is in the evidence that initially, the parties were co-habiting together at Ambejogai and that time, daughter Anushka was begotten. Thereafter, respondent no.1 Rupali had lodged F.I.R. under Section 498-A of Indian Penal Code and proceedings for maintenance. Both were compromised and she resumed co-habitation. Thereafter, son Soham was born to her, but again due to ill-treatment she had to leave her husband's house.

10. The cross-examination of Rupali shows that she had showed willingness but stated that she apprehended danger to her life. It was again asked to her that the petitioner herein had secured separate residence at Ambejogai and whether she was ready to co-habit with him in the separate residence, but she again stated that she apprehended danger to her life. In further cross, she admitted that she was insisting the petitioner to shift his residence to Nanded. At the end of cross, again she was asked and again she stated that she was ready to reside with the petitioner but she apprehended danger

to her life. Now, it is necessary to consider whether there was danger to her life and her apprehension was real or false. The petitioner has produced transcript of audio recorded conversation between himself and respondent no.1 – Rupali. The same has not been challenged. On carefully going through the audio recording on 18.7.2015, 21.7.2015, 22.7.2015 and 25.7.2015, it is disclosed that respondent no.1 Rupali was not ready to leave Nanded and come down to Ambejogai. She was demanding money and was making allegations against her husband. She was abusive and threatened him that she would cause his arrest. She was addressing him as impotent and was asking him to kill his father. She was abusing his relatives and him in a very filthy language. The language is such that no loyal and honest wife would use such language while talking with her husband. The contents of this audio recording shows that she is very dominating person and she could never be under the control of her husband. The petitioner could not have subjected her to any type of ill-treatment, physical or mental. The conversation shows that there is no substance in her contention that she was apprehending any danger to her life. She was all along demanding money and whenever money was not offered, she was using abusive and filthy language to the petitioner and his sisters, mother and father. I find no substance in her contention that she was apprehending danger to her life.

11. Rupali's evidence also shows that she was running beauty parlour business and some customers used to come to her, but her business was not flourished, as claimed by the petitioner. The learned trial Judge observed that she loses temper and used abusive and insulting language when she was instigated by the petitioner. On

overall reading the conversation, I find no substance in this assumption of the learned trial Judge. She has freely and boldly used very abusive and insulting language many a times without any instigation. I, therefore, find that the respondent no.1 Rupali was residing separately from the petitioner of her own without any reason.

11. Therefore, the respondent no.1 Rupali is not entitled for maintenance.

12. As far as income of the petitioner is concerned, though the petitioner relied on his own evidence and produced no documents, the record shows admission that petitioner's father is having a huge house. There are suggestions to show that petitioner's father was having shop of ready-made garments and the petitioner was their only son. There is no substance in the contention of the petitioner that he was residing separately from his parents. The petitioner was asked whether his father owns land of 4 acres, 17 gunthas, the petitioner did not deny but stated that he was not aware of it, which is unacceptable.

13. Thus, it is found that at the time of filing the petition, Rupali was not willing to resume co-habitation with her husband and, therefore, she was not entitled for maintenance. Now, in the present revision, she has offered to resume co-habitation and present petitioner Amit has declined to resume co-habitation. Though Rupali was initially residing at her maternal house of her own without reason, her subsequent offer to resume co-habitation needs to be considered. Amit filed petition for restitution of conjugal rights, but he did not

prosecute it and withdrew it. Now, it is admitted that Amit has declined to co-habit with her and is demanding divorce by mutual consent. Considering the facts, Rupali was not entitled for maintenance for the past, but since her offer to resume co-habitation followed by declining of offer by her husband, she is entitled to claim maintenance. She has some income from beauty parlour, but it is not shown to be sufficient to earn her livelihood. Her conversation with her husband shows that she was short of customers and was always in need of money. Considering the status of the petitioner and his parents, he must be having handsome income and grant of maintenance of Rs.2,000/- per month to each of his two children is not at all excessive or exorbitant. I hold that respondent no.1 – Rupali is entitled for maintenance at the rate of Rs.3,000/- per month from the date of this order. Hence, the revision application deserves to be partly allowed. Hence, I pass the following order :

ORDER

(I) The Criminal Revision Application is partly allowed.

(II) The judgment in Petition No.E-86/2015 delivered by the Judge, Family Court, Nanded dated 10.1.2017 with regard to grant of maintenance to respondent no.1 Rupali is modified. She shall be entitled for maintenance of Rs.3,000/- per month from the date of this order and not for earlier period. The order of granting maintenance to her from the date of application till this date is set aside. Whatever maintenance amount is paid or deposited in the Court shall be paid to respondent no.1 Rupali towards grant of maintenance as per this order and the earlier payment shall be accordingly adjusted.

(III) The revision with regard to maintenance granted to two children Anushka and Soham is dismissed.

(IV) In the facts and circumstances, parties shall bear their own costs.

(A.M. DHAVAL, J.)

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