

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

CRIMINAL WRIT PETITION NO. 303 OF 2018

Kanifnath Gorakh Darade

Age: 33 years, Occu. Service,

R/o At present behind Ganpati Temple,

At and po. Parali, Tq. Sudhagadh,

Dist. Raigadh

Permanent R/o village Borphadi,

Tq. & Dist. Beed.

..PETITIONER

VERSUS

Ranjana Kanifnath Darade

Age: 29 years, Occu.: Household,

R/o presently Wadgaon (Gunda),

Tq. & Dist. Beed.

..RESPONDENT

Mr. H.V. Tungar, Advocate for petitioner.

Ms. N.D. Borade, Advocate h/f Mr. K.U. More, Advocate for respondent.

CORAM : SANGITRAO S. PATIL, J.

RESERVED ON : 23rd AUGUST, 2018

PRONOUNCED ON : 29th AUGUST, 2018

JUDGMENT :-

Rule, made returnable forthwith. Heard finally with the consent of the learned Counsel for the parties.

2. The petitioner has challenged the judgment and order dated 18th January, 2018 passed in Criminal Revision

Application no. 101 of 2017 by the learned Sessions Judge, Beed, whereby the judgment and order dated 28th September, 2017 delivered in Criminal Miscellaneous Application no. 677 of 2014 by the learned Judicial Magistrate First Class (Court no.6), Beed, directing the petitioner to pay maintenance to the respondent at the rate of Rs.5,000/- per month, came to be confirmed.

3. There is no dispute that the petitioner and the respondent got married on 05th June, 2006. Their marital tie is still subsisting.

4. It is the case of the respondent that after marriage, she went to cohabit with the petitioner at his house. Initially she was treated properly for some days. Thereafter the petitioner and his parents started ill-treating her on the say that she was not good looking and they were not duly respected in the marriage. They used to beat her on trifle grounds. They used to keep her starved. The respondent went on suffering all that torture with the hope that there would be a good change in the

behaviour of the petitioner and his parents in future. The petitioner ultimately drove her out of his house. Since then, she is residing at her maternal home. The petitioner is serving as a Teacher and getting Rs.22,000/- per month towards salary. He possesses 5 acres of agricultural land at village Borphadi and 6 acres of agricultural land at village Balapur. He is earning Rs.2,00,000/- per annum from the said agricultural lands. He is having sufficient means to pay Rs.5,000/- per month to the respondent towards maintenance. Therefore, she claimed maintenance of Rs.5,000/- per month.

5. The petitioner opposed the application by filing reply. He admitted that he is serving as a teacher, but denied that he is getting Rs.22,000/- per month towards salary. He denied that he is possessing any agricultural land and earning Rs.2,00,000/- per annum therefrom. He denied that he ill-treated and deserted the respondent. According to him, the respondent resided at his house properly for the initial period after their marriage. Thereafter she started quarreling with his family members

on trifle grounds. She used to hurl abuses against him. She used to raise shouts and get irritated. The petitioner was residing away from his village for taking education. He used to convince the respondent to behave properly whenever he used to go to his house. However, it was of no use. Since there was no change in the behaviour of the respondent, the petitioner sent her to her maternal home with her father with the hope that there would be some change in her nature after she resided at her maternal home for some days. He stated that after he got the service, his parents, relatives and himself made several attempts to bring the respondent back to his house, but it was of no use. He sent two notices calling upon the respondent to resume cohabitation, however, the respondent did not respond to those notices. According to the petitioner, the respondent herself has deserted him without any reason and that she is not interested in cohabiting with him. It is stated that the petitioner has to visit his house from the place of his service, which is at a distance of about 350 kms. He has to spent for his journey from his place of service to his native place. He

has to maintain his aged parents. He has to incur medical expenses for the ailments of his parents. He has to spend for the education of his younger brother. He has to repay the loan that has been taken by him for his education. He is not in a position to maintain his family and himself on the income earned from his salary. The respondent is residing with her parents. She does agricultural work and earns Rs.4,500/- to Rs.5,000/- per month. She is able to maintain herself from her own income. According to the petitioner, since the respondent herself has left his company and has started residing at her maternal home without any just reason, she is not entitled to get maintenance from him. He, therefore, prayed that the criminal miscellaneous application may be rejected.

6. In support of her claim for maintenance, the respondent examined herself and her brother – Vishnudas. She produced the salary slip of the petitioner in respect of the month of January, 2015. As against this, the petitioner examined himself and closed his evidence.

7. The learned Counsel for the petitioner pointed out to the cross-examination of the respondent, wherein she admits that when the petitioner got service, she was residing at her maternal home. She further admits that she was residing at her maternal home at her own will. On the basis of these statements, the learned Counsel for the petitioner submits that the respondent is residing at her maternal home at her own will and therefore, in view of Section 125(4) of the Code of Criminal Procedure, she is not entitled to get maintenance from the petitioner. In support of this contention, he relied on the judgment in the case of **Sow. Sumanbai Ramesh Garje Vs. Ramesh Dagadu Garje**, LEX(BOM) 2014 6 183.

8. It seems that the learned Counsel for the petitioner has picked up the above mentioned two sentences and tried to interpret them without referring to the context in which the said statements were made. In paragraph no.8 of his reply, the petitioner himself has stated that he had sent the respondent to her maternal home with her father because he was taking education and

with the hope that there would be improvement in the behaviour of the respondent. The respondent, thus, has stated about her past residence at her maternal home after her departure with her father. It was quite natural for her to reside at the house of her parents when the petitioner was not residing at his native place since he was residing at some other place for taking education. Therefore, it cannot be said that when the petitioner himself allowed the respondent to go to the maternal home with her father during his absence at his native place, she had deserted him. Had the petitioner been residing at his native place and had the respondent left her to maternal home with her father without any reason, the case of the petitioner that the respondent deserted him could have been accepted. However, the respondent did not leave the company of the petitioner when he was residing at his house. Consequently, the alleged admissions in respect of her earlier departure from her matrimonial home and residence at her maternal home would not indicate that she deserted the petitioner.

9. The respondent has come with a specific case that she was not treated properly by her in-laws and the petitioner when she was residing at her matrimonial home. She has stated about a specific incident that the petitioner, at the instigation of his parents, hurled abuses against her and hit a stone on her head causing her serious bleeding injury. She then states that thereafter the petitioner had driven her to her maternal home. The said fact was not mentioned in her application. When she was asked the reason for not mentioning the said fact in her application for maintenance, she replied that she is not able to state any reason for this omission. However, in her subsequent reply to the suggestion put by the learned Advocate for the petitioner, it came to be recorded that since such incident of beating had not taken place, it was not mentioned in her application. I doubt about the correct recording of the evidence by the learned Magistrate in respect of this admission. As stated above, when the respondent was asked as to why she did not mention the above mentioned incident of beating in the application, she replied that she had no reason to assign

for the said omission. If that be so, she would not have admitted subsequently that since no such incident had taken place, she did not mention it in the application. My apprehension about incorrect recording of evidence would get fortified from the last sentence of cross-examination of the petitioner, wherein it is mentioned that "आज रोजी खोटी साक्ष देत आहे" (A false evidence is being given today). By no stretch of imagination, it can be said that the petitioner himself would admit in the cross-examination that he was giving false evidence. It seems that the learned Magistrate was not keen in recording the evidence and therefore, such mistake has occurred. The manner in which the application for maintenance has been drafted and cross-examination of the petitioner has been taken shows that the learned Counsel for the respondent also was not an experienced hand. In the circumstances, the admissions alleged to have been given by the respondent that no such incident of beating her by stone had taken place and therefore she did not mention it in her application, cannot be attached with any importance.

10. The respondent had come with a specific case that she was not liked by the petitioner, and therefore, she was being ill-treated by him. Her brother – Vishnudas supports her version. The petitioner and the respondent got married on 05th June, 2006. The petitioner states in his cross-examination that the respondent happens to be from his relatives and that their marriage was performed with the consent of each other. In the circumstances, there was no reason for the respondent to reside at her maternal home at her own will. From the evidence of the petitioner it is clear that when he got married the respondent, he was not in service as a teacher. He got service in the year 2010 i.e. after four years of his marriage. It seems that after getting service, he lost interest in cohabiting with the respondent. He does not state as to when he had gone to bring the respondent back to her maternal home. He did not examine any witness in support of his contention that he tried to bring her back but she refused. He did not even produce the copies of the notices allegedly sent to the respondent. It is not known as to what were the contents of those notices and

what was asked by him from the respondent. The brother of the respondent states that the petitioner had sent the notices with a view to create the evidence for seeking divorce. In the circumstances, it was necessary for the petitioner to produce the notices to show his bonafide intention to cohabit with the respondent. He did not file any petition for restitution of conjugal rights. This fact shows that the offer made by the petitioner to cohabit with the respondent was not genuine.

11. It has come in the cross-examination of the respondent that she does agricultural work with her father in his agricultural land when labourers are not available. This fact shows that the financial condition of the father of the respondent is not so sound that the respondent would sit idle and enjoy the life at her maternal home. There seems to be no special reason for her to reside at her maternal home. No father would like to keep his married daughter at his house. In fact, it is a matter of disrespect for the family when the married daughter resides at her maternal home. In the absence of any

compelling circumstances, the respondent would not have resided at her maternal home. It follows that it was because of the ill-treatment at her matrimonial home that the respondent was constrained to reside at her maternal home. The offer of the petitioner to maintain the respondent at his house, does not appear to be genuine and bonafide.

12. The petitioner and the respondent are residing separate since long. There is nothing on record to show that the petitioner had made any provision for the maintenance of the respondent. This fact itself is sufficient to establish that the petitioner neglected to maintain the respondent. In the facts and circumstances of the case, the judgments in the cases of **Sumanbai Ramesh Gajre (supra)** and **Bhoorabai Bhaulal Vs. Bhaulal Mattu LEX(BOM) 1980 9 34** would be of no help to the petitioner.

13. The petitioner is serving as a teacher. The salary slip for the month of January 2015 shows that his gross salary is Rs.24,970/- and after deduction his net

salary is Rs.24150/-. However, it is strange to note that in his cross-examination he states that he does not know as to what is his salary. It is obvious that the petitioner has tried to suppress his income, which fact was within his special knowledge. He admits in his cross-examination that there are agricultural lands at village Borphadi and Balapur and that his parents and himself are jointly cultivating the same. As such, the petitioner must be getting some income from the agricultural lands as well. Even if it is accepted that he has to maintain his parents, he is having sufficient means to pay maintenance to the respondent even from his own salary. There is nothing on record to show that the respondent is having any permanent source of income and that she is able to maintain herself. Considering the status of the parties, the bare requirement of the respondent for her maintenance and the income of the petitioner, the quantum of maintenance fixed by the Trial Court and upheld by the Revisional Court cannot be said to be excessive or exorbitant. The respondent has proved her case for grant of maintenance. It is not that she has left the company

of the petitioner at her own without any reason. In the circumstances, the impugned judgments and orders, being legal, proper and correct, would not call for any interference. There is no substance in this petition. It is liable to be dismissed with costs. Hence the following order :-

ORDER

(I) Criminal Writ Petition is dismissed with cost of Rs.2,000/-, to be paid to the respondent.

(II) Rule is discharged.

[SANGITRAO S. PATIL]
JUDGE