

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 198 OF 2017

Abdul Majeed Khateeb S/o.
 Abdul Raheem,
 Age: 35 years, Occu: Labour,
 R/o: Nayee Abadi, Near Water Tank,
 Nanded, Tq. & Dist. Nanded. ... **Applicant**

Vs.

1. Nasreen Begum W/o
 Abdul Majeed Khateeb,
 Age 28 years, Occu: Household
 R/o: C/o. Sk. Ameeruddin,
 Near Mahemudiya Masjid,
 Mehboob Nagar, Near Govind Nagar,
 Nanded, Tq. and Dist. Nanded.
2. Abdul Aaqeeb Khateeb S/o.
 Abdul Majeed Khateeb,
 Age: 5 years (Minor) U/g.
 Respondent No.1. ... **Respondents**

Mr. G.R. Syed, Advocate for the Applicant.
 Mr. Avinash D. Hande, Advocate for the Respondents.

with

CRIMINAL REVISION APPLICATION NO. 248 OF 2017

1. Nasreen Begum W/o
 Abdul Majeed Khateeb,
 Age 28 years, Occu: Household
2. Abdul Aaqeeb Khateeb S/o.
 Abdul Majeed Khateeb,
 Age 4 years, Occu: Nil,
 U/G of applicant no.1
 Both R/o: New Abadi,
 Near Water Tank, Tq. Ardhapur,
 Dist. Nanded.
 At present C/o. Sk. Ameeruddin,

Near Mahemudiya Masjid,
Maheboob Nagar, Near Govind Nagar,
P.S. Airport, Nanded.

... **Applicants**

Vs.

Abdul Majeed Khateeb S/o.
Abdul Raheem,
Age: 36 years, Occu: Agri. & Business,
R/o: New Abadi, Near Water Tank,
Tq. Ardhapur, Dist. Nanded.
P.S. Ardhapur.

... **Respondent**

Mr. Avinash D. Hande, Advocate for the Applicants.
Mr. G.R. Syed, Advocate for the Respondent-sole.

CORAM : MANGESH S. PATIL, J.

DATE OF RESERVING THE JUDGMENT : 28.06.2018
DATE OF PRONOUNCING THE JUDGMENT : 25.07.2018

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides the matters are heard finally.

2. These criminal revisions arise out of the judgment and order passed by the Family Court, Nanded in Petition No. E-51 of 2016 dated 20.07.2017 from a proceeding under Section 125 of the Cr.P.C. The husband as well as the wife are taking exception to the judgment and order. Since the impugned judgment and order assailed in both the proceedings is the same, both the revisions have been heard together and are being disposed of by this common judgment. In order to avoid confusion the parties are being referred to as the wife and the husband.

3. The wife lodged the petition alleging that the marriage was solemnized on 21.12.2008. She started co-habiting with the husband in his joint family. However, shortly thereafter she was subjected to ill-treatment by alleging that she was incapable of begetting any issue. She was taunted and was even beaten. She was also taken to an Sorcerer and subjected to cruel and inhuman treatment. Even the husband and her in laws started raising a demand for money. He even started suspecting her chastity. In the year 2011 demand for money was raised, she was assaulted and was driven out of the house and since thereafter she started residing with her parents.

4. It was further alleged that while she was staying in her parental house the husband was intermittently visiting her and as a result she could conceive and gave birth to a son on 01.01.2012. It was further alleged that even the husband and his family members attended the naming ceremony but refused to take her back for co-habitation. After some intervention she could resume the co-habitation but again the ill-treatment continued. A meeting was held for reconciling the dispute. One Samad had tried to intervene. After such reconciliation, the couple started residing in a rented premises separate from his family members. However, they again instigated him and he started ill-treating her. He snatched all her ornaments and even documents pertaining to her education. She was once again driven out by him. Again a meeting

was held to reconcile the dispute on 23.12.2013. He and his relatives assured to maintain her properly and the co-habitation resumed still her plight did not abate. She was tortured, money was demanded and finally she was driven out with her kid and since then she was staying with her parents. She had no source of income. She was unable to maintain herself and maintain her son. Whereas the husband and his family members had six acres of irrigated land and were earning handsomely besides he was also doing plotting business at Bhokar. Lastly, she filed this petition on 08.06.2016 claiming maintenance for herself and her son.

5. The husband contested the petition. He admitted the relation but denied the rest of the allegations. He contended that since inception she never willingly stayed in his house and was persistently insisting for a separate residence. On that count she started frequently quarreling with him and on her own left the house and went back to her parents. He frequently visited her and she could beget the son during that period. After the birth of son he caved in to her demand of separate residence and the couple started residing in a rented premises at Ardhapur. However she did not like the arrangement and threatened to end her life if she was compelled to stay there. When he informed her parents about this her father took her back to his home and assured the husband of convincing her. However, since thereafter, in spite of his request the wife has not responded and has flatly refused to resume co-

habitation. In a meeting which was organised to reconcile the issue she insisted for divorce and simultaneously demanded an amount of Rs.3,50,000/-. Thus since 16.03.2014 she on her own has been staying in her parental house. His attempts to bring her back did not bear any fruit. He had to issue couple of notices but in vain. On the contrary, she initiated several legal proceedings. Apart from filing of this proceeding she also approached the Magistrate under the provisions of the Protection of Women from Domestic Violence Act, 2005 and also filed a complaint against him and his family members for the offence punishable under Section 498-A of the I.P.C. Thus according to him since she has deserted him, she is not entitled to claim any maintenance.

6. The husband further denied that his family has six acres of irrigated land and has been earning handsomely from agricultural income. He contended that he was a daily bread winner earning paltry Rs. 100/- to Rs. 150/- per day, whereas the wife was doing tailoring work and was getting Rs. 200/- to Rs. 300/- per day. He also expressed his readiness and willingness to maintain the son.

7. Since it was a matrimonial dispute the learned Judge of the Family Court had referred the parties to a Mediator but the attempt failed. The parties led evidence and by the impugned judgment and order the learned Judge allowed the petition partly, only to the extent of the son awarding him maintenance @ Rs.5000/- per month but refused

any maintenance to the wife. Hence these revisions by the wife and the husband. The husband is impugning even the maintenance awarded to the son particularly the quantum and the wife is obviously claiming the maintenance.

8. The learned advocate for the wife vehemently submitted that the observations and the conclusions drawn by the the learned Judge are perverse and arbitrary. He has drawn jumping conclusions. The inferences drawn by him are not supported by the evidence. The very fact that the wife had to return back to her parents and the conduct of the husband in allowing her to go back to parents and his frequent visits to her parental house to the extent that the couple begetting a child was sufficient to infer that even he was not otherwise interested in maintaining her or providing for her maintenance and had find out a convenient way to avoid the liability by allowing her to stay at the parental home. This was sufficient to prove refusal or neglect and the wife was entitled to maintenance. The evidence has not been considered in the proper perspective. The evidence as a whole has not been taken into consideration and the learned Judge has only picked up bits and pieces to objectively support his inferences merely because the wife had left the matrimonial home voluntarily. Referring to the decision in the case of **Laxmi Bail Patel V/s. Shyam Kumar Patel; 2002 DGLS(SC) 252**, he would submit that even if it is held that the wife had left the matrimonial home voluntarily, maintenance cannot be

denied. No strict proof of neglect or refusal was necessary. There were sufficient circumstances based on which such an inference is easily deducible and therefore the impugned judgment and order refusing her maintenance by holding that she was residing separately without any justifiable cause is perverse, arbitrary and capricious and this Court should intervene in the revisional jurisdiction.

9. The learned advocate who represents wife also represents the son and submitted that, in the facts and circumstances, no fault can be found in the impugned judgment and order in awarding maintenance to the son @ Rs. 5,000/- per month while taking into consideration the fact that the family of the husband was having some agricultural land plus by taking in to account minimum wages, he was earning around Rs. 10,000/- to 12,000/- per month.

10. The learned advocate for the husband strongly supported the order to the extent it refuses maintenance to the wife. He would submit that there is no perversity or arbitrariness. The conclusions are based on correct appreciation of the evidence. There was ample evidence demonstrating her behaviour which was not compatible with the one who was willing to cohabit with the husband. There was enough material to show that she had voluntarily gone back to her parental home and was or willingly stayed put. She was fond of luxurious life which the husband could not provide for and that was the

reason for the discord and the application has been rightly rejected to her extent.

11. The learned advocate further submitted that though the husband is liable to maintain the son and no fault can be found in awarding maintenance to the son, the quantum assessed by the learned Judge is faulty. In spite of having held that his daily wages come to Rs. 10,000- to 12,000/- per month, the son has been awarded Rs. 5,000/- without any justifiable reason and the quantum may be curtailed.

12. The learned advocate also placed reliance on the decision of the Supreme Court in the case of **Deb Narayan Halder V/s. Smt. Anushree Halder; AIR 2003 SUPREME COURT 3174** and the judgment of the Division Bench of this Court in the case of **Mrs. Meena Dinesh Parmar V/s. Dinesh Hastimal Parmar; AIR 2005 BOMBAY 298**.

13. It is necessary to bear in mind at the inception that since a revisional power of this Court vested in it under Section 401 of the Cr.P.C. is being invoked to impugn the judgment and order, the power can be exercised only if it could be demonstrated that the observations and the conclusions drawn by the learned Judge in the impugned judgment and order are perverse, arbitrary or capricious. This necessarily requires this Court to scan the evidence.

14. Taking up the case of the wife, it needs to be borne in mind that it was a proceeding under Section 125 of the Cr.P.C. wherein a wife is entitled to claim maintenance by demonstrating that the husband has been refusing or neglecting to maintain her in spite of having sufficient means when she is incapable of maintaining herself. The wife in her testimony has broadly corroborated her allegations in the application which one need not repeat. She has also examined couple of witnesses but as has been rightly held by the learned Judge they do not have any direct knowledge and have only referred to what the wife had told them. Thus, apparently it is her sole testimony on which she has to stand. What transpires from the evidence led by the parties and which is apparently a common ground that for whatever reason, she was staying with her parents and it was he who was visiting her while she was staying with her parents and during that period she could conceive. I am referring to this circumstance since one can easily infer from such conduct of the parties that irrespective of dispute between them the arrangement was tacitly mutual. Based on it one may draw inference that she on her own accord was staying with the parents. However, simultaneously the circumstance can be looked upon conversely to demonstrate that even the husband was comfortable with the arrangement and had not taken any exception for such an arrangement. On the contrary he frequented to the place, he was allowed to do so and even the couple could conceive. If such was the state of affairs, though

the version of the wife that she was driven out of the house at that time can be looked at with some degree of doubt, his conduct in allowing such an arrangement unabashedly can also be looked at as tantamount to his refusal or neglect. It is not his version that during such an arrangement he had ever made any provision for her maintenance. In my considered view, this was indeed a strong and material circumstance which should have weighed with the learned Judge. However he has only looked at this circumstance in a lopsided manner to conclude that she was staying with her parents voluntarily.

15. It is also important to note that it is further a common ground that after some dispute and reconciliation measures the couple had started residing separately in a rented premises. Taking in to account the stance of the husband that since inception she was insisting for separate residence as a cause for the dispute, one cannot comprehend as to why and how having made such a separate arrangement she would instead of being content, had deserted the husband. Merely because during her cross-examination she has stated that from the rented house she went back home by putting a lock to it, no inference could have been drawn by the learned Judge about she having deserted the husband. It is not expected of a wife to prove that the refusal or neglect should be by some positive act. A passive conduct of the husband is equally important. He should have probed the reason for her to put the lock to the rented premises and to go back to her

parents. His conclusion based on such admission that she had on her own left the company of the husband, in my considered view is not sustainable.

16. It is further important to note that though the couple was married in the year 2008, there have been disputes for whatever reason and admittedly attempts at reconciliation were made due to the intervention of some well-wishers. If at all there was no dispute and every blame was to be passed on to the wife for the dispute, neither she nor her parents would have come to the table for settlement of the dispute.

17. Even the version of the husband that she was insisting for divorce and was demanding a one time settlement amount of Rs.3,50,000/- is in my considered view flimsy. If at all she was not ready to resume the matrimonial tie and was seeking a divorce, she would have straightway refused to attend the conciliation measures which took place not once but twice.

18. The learned Judge appears to have been swayed by the admission of Syed Fayak (PW-2) wherein he admitted that during the course of one such re-conciliation meeting there was consensus arrived to dissolve the marriage on payment of lump-sum amount of Rs. 3,50,000/- and that the husband had thereafter resiled from such an agreement. Based on such statement the learned Judge has drawn a

conclusion that it corroborates the stand of the husband that it was the wife who was insisting for a divorce and was demanding the money. One cannot comprehend as to how such an admission of a witness can result in drawing the conclusion which is drawn by the learned Judge. The witness had nowhere admitted that the agreement was arrived at the insistence of the wife. In the absence of any other evidence, such an inference drawn by the learned Judge was clearly a frogs leap.

19. Again the learned Judge seems to have been moved by the issuance of couple of notices by the husband (Exhibit-34 and 36) which according to him demonstrated his *bona fides* and were sufficient to infer that he was ever ready to maintain her and was not refusing or neglecting her. In my considered view, even such an inference is not borne out from this circumstance which cannot be looked at in isolation. These notices are dated 12.02.2016 and 25.02.2016. Even according to the husband, wife was staying with her parents since 16.03.2014. Whereas these notice have apparently been sent after couple of years. There is no material to show that during the intervening period he had made any attempt to restore conjugal rights. His passive conduct for the intervening period also was equally important. Ignoring that, simply on the basis of this circumstance of issuance of couple of notices after lapse of two years in a short span of about 12-14 days can only be said to be an afterthought attempt which was grossly insufficient much less to conclude that the husband was ready to maintain and had not neglected

the wife.

20. True it is that merely because the wife has instituted a proceeding under Section 498-A of the I.P.C. against the husband and other in laws one cannot conclude that there was a refusal or neglect on the part of the husband. One has to scan and consider all the attending circumstances to ascertain if the conduct of the husband demonstrates the refusal or neglect of the wife. One need not insist for a specific overt act like evidence of beating or driving out the wife from the matrimonial home or the insistence of such kind. The overall conduct of the husband since the date of marriage till filing of the petition for maintenance will have to be considered. Looked at from this angle the aforementioned facts and circumstances as borne out from the evidence discussed herein-above are in my considered view sufficient to hold that by his active and passive conduct he has refused or neglected the wife. The inference drawn by the learned Judge is clearly perverse, arbitrary and capricious. He has picked up only some of the circumstances and has drawn the inferences which are not deducible as is demonstrated herein-above. The order to the extent of refusing maintenance to the wife therefore is liable to be interfered with.

21. Now coming to the order of maintenance awarded to the son, no fault can be found with the observations and conclusions of the learned Judge that nothing further needed to be established for the son

to claim maintenance since he is barely an infant.

22. This takes me to the quantum of maintenance. The learned Judge has, based on the evidence before him has fairly concluded that the income of the husband was around Rs.10,000/- to 12,000/- per month and has rightly proceeded on that basis. However, he has awarded Rs.5,000/- per month to the son since according to him the wife was not entitled to claim any maintenance. Now that I have found even the wife to be entitled to claim maintenance, taking into consideration the income of the husband, in my considered view, she deserves to be paid Rs.3,000/- per month as maintenance, whereas the son would be entitled to claim Rs.2,000/- per month. In aggregate the liability comes to Rs.5,000/- per month which is between 30% to 40% of the income of the husband and which is within the well accepted norms.

23. The Criminal Revision Application No. 198 of 2017 preferred by the husband is partly allowed. The Criminal Revision Application No. 248 of 2017 preferred by the wife is allowed.

24. The impugned judgment and order refusing maintenance to the wife and awarding maintenance to the son @ Rs.5,000/- per month is quashed and set aside.

25. The husband shall pay Rs.3,000/- per month to the wife

and Rs.2,000/- per month to the son from the date of the application i.e. 08.06.2016. Rest of the order is confirmed.

26. The rule is made absolute in above terms.

(MANGESH S. PATIL, J.)

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