

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.135 OF 2018

Kailash s/o Dhondbarao More,
Age : 31 years, Occu. Service
in Z.P., Yawatmal,
Veterinary Hospital at Ichora,
Tq. Arni, Dist. Yawatmal,
R/o Uatti, Tq. Mahagaon,
District Yawatmal

APPLICANT
(Orig.Respondent)

VERSUS

Jyotsna w/o Kailash More,
Age : 23 years, Occu. Household,
R/o Raj Sarthi Nagar, Taroda Naka,
Nanded, Tq. and District Nanded

RESPONDENT
(Orig.Petitioner)

Mr. R.N. Chavan, Advocate holding for Mr. Vijay
Sharma, Advocate for the applicant
Mr. Upendra B. Bilolikar, Advocate for the respondent

CORAM : SANGITRAO S. PATIL, J.

RESERVED ON : 9th AUGUST, 2018

PRONOUNCED ON : 24th AUGUST, 2018

JUDGMENT :

The applicant has challenged the legality and correctness of the judgment and order dated 1st August, 2017, passed by the learned Judge of the Family Court at Nanded in Petition No.E-36 of 2016, whereby he directed the applicant to pay maintenance to the

respondent at the rate of Rs.5000/- per month from the date of filing of the petition i.e. from 21st April, 2016.

2. The applicant married to the respondent on 5th February, 2014. After the marriage, they resided initially at village Uti, Taluka Mahagaon and then at village Aarni. They are residing separate since 9th November, 2015.

3. It is the case of the respondent that after some months of the marriage, the applicant and his family members started illtreating her with a view to compel her to bring Rs.5,00,000/- from her maternal home. She did not conceive any child for about 7 to 8 months after the marriage. On that count also, she was being taunted by calling her as "wanzoti". It is alleged that in the month of August, 2014, during menses of the respondent, the applicant committed anal intercourse with her against her will. She, therefore, lodged F.I.R. against the applicant on the basis of which a crime has been registered in the Police Station. The respondent was taken by the applicant to his house from her maternal home in the month of October, 2015 on the assurance that he would treat her properly.

However, after five days of her residence, the applicant again started illtreating her on account of his illegal demand of money. He further prohibited her from talking to her parents on phone. Thereafter, the father of the respondent went to the house of the applicant on 9th November, 2015 and brought her back to his house. At that time, the applicant had beaten the father of the respondent. It is alleged that the applicant had taken video clips in respect of his sexual acts with the respondent. He threatened her that in case she failed to bring Rs.5,00,000/- from her maternal home or give consent for his second marriage, he would make them viral and defame her and her parents. According to the respondent, the applicant deserted her. He refused and neglected to maintain her. She has no source of income. She is unable to maintain herself. The applicant is serving as Veterinary Supervisor and getting salary of Rs.50,000/- per month. He is possessing irrigated agricultural land admeasuring ten acres, from which he earns about Rs.10,00,000/- per annum. The respondent claimed Rs.20,000/- per month towards maintenance.

4. The applicant resisted the petition. He denied all the allegations made by the respondent against him.

According to him, the respondent herself was not interested in cohabiting with him. She frequently used to go to her maternal home. He tried to convince her to behave properly, but it was of no use. Ultimately, on 9th November, 2015, the father of the respondent took her to his house. Thereafter also, the applicant tried to bring her back to his house, but she did not respond positively. He filed a petition for restitution of conjugal rights against the respondent and the same is pending. According to the applicant, the respondent left his company at her own without any reasonable cause, therefore, she is not entitled to get maintenance. The applicant stated that the respondent has done D.Ed. Course. She is giving tuitions and earning Rs.25,000/- per month. She is able to maintain herself. On the other hand, the applicant is the only son of his parents. He has to maintain his parents. He is not in a position to pay separate maintenance to the respondent. He stated that he is still ready to cohabit with the respondent. He denied his income as claimed by the respondent. On these grounds, he prayed for rejection of the petition.

5. The applicant and the respondent examined

themselves before the Trial Court in support of their respective claims. They did not examine any other witness. As such, there is oath against oath between the parties.

6. The respondent has specifically stated as to how she was being illtreated by the applicant in connection with his demand for money. She further stated on oath that the applicant had forcibly subjected her to anal intercourse due to which she had sustained injuries. The applicant did not extend any medical treatment to her. He further prepared video clips in respect of his sexual activities with the respondent. He used to threaten her that he would make those video clips viral in case she did not consent for his second marriage or bring rs.5,00,000/-.

7. The respondent has produced the copy of the F.I.R. bearing No.143 of 2016, registered on the report lodged by the respondent against the applicant for the offence punishable under Section 377 of the Indian Penal Code ("IPC", for short). The offences punishable under Sections 498-A, 323, 504 and 506 read with section 34 of the IPC also have been registered against the applicant, his parents and sister. Though these allegations have

been denied by the applicant, it would be improbable on the part of his wife to make such wild allegations against him falsely.

8. It has come in the cross-examination of the applicant that in October, 2015, his father and himself went to the maternal home of the respondent and took her to their house on the assurance of treating her properly. This admission itself indicates about previous illtreatment given to the respondent. The version of the applicant that the respondent was not interested in cohabiting with him and she frequently used to go to her maternal home, does not appear to be natural and probable. Had she not been interested in cohabiting with the applicant, she would not have resided with him during the period of one year and nine months, though with some intervals. She would not have at all gone to the house of the applicant if she really had no intention to cohabit with him.

9. The respondent has produced the copy of the FIR lodged by her father against the applicant on 27th March, 2016 on the basis of which a non-cognizable case for the offence punishable under Section 506 of the IPC was registered against him and others. The applicant is

alleged to have threatened him of dire consequences in case the report lodged by the respondent against him and his family members was not withdrawn. He had further threatened to make the video clips of the respondent viral. From this evidence, it is sufficiently clear that there was illtreatment to the respondent at the hands of the applicant and therefore, she was compelled to reside at her maternal home.

10. There is no dispute that the applicant and respondent are residing separate from each other since 9th November, 2015. In paragraph No.4 of his cross-examination, the applicant admits that after 9th November, 2015, he never had gone to the maternal house of the respondent to bring her back to his house. There is nothing on record to show that after 9th November, 2015, the applicant made any provision for the maintenance of the respondent. These facts are sufficient to prove that the applicant refused and neglected to maintain the respondent. In the circumstances of the case, the judgment in the case of ***Sumanbai Ramesh Garje Vs. Ramesh Dagdu Garje***, delivered by this Court in Criminal Writ Petition No.422 of 2000 on 19th June, 2014 would be of no help to the applicant

to deny the claim of the respondent for maintenance.

11. The respondent has produced salary certificate of the applicant in respect of the month of September, 2016. His total salary is Rs. 25,874/-. The amount of Rs.15,000/- seems to have been deducted from his salary towards repayment – instalment of loan taken by him from one Credit Cooperative Society. The applicant stated that he has availed housing loan of Rs.5,00,000/- for construction of house at village Uti. However, he has not produced any document to show that he constructed any house by spending about Rs.5,00,000/-. It seems that in order to frustrate the claim of the respondent for maintenance, the applicant has taken advance amount of Rs.5,00,000/- on the pretext of constructing a house. The deduction of Rs.15,000/- per month from the salary of the applicant cannot be said to be statutory deduction. It cannot be taken into consideration while fixing the income of the applicant.

12. Besides the salary income of the applicant, there seem to be agricultural lands standing in the names of his father and grandfather bearing Block Nos.122/2 and 123/2, admeasuring 1 H 62 R and 1 H 61 R respectively from which the family of the applicant must

be getting income. The applicant has not disclosed the income from these agricultural lands, which fact was within his special knowledge. Any way, from the total area of these lands, it can be inferred that the parents of the applicant must be getting sufficient income from these lands to maintain themselves.

13. The respondent has come with a case that she has no source of income and is unable to maintain herself. The applicant has not produced any evidence to show that the respondent is having any concrete monetary income, which would be sufficient for her maintenance. In the circumstances, the case of the respondent that she is unable to maintain herself will have to be accepted and accordingly accepted.

14. As stated above, the applicant has refused and neglected to maintain the respondent though he has sufficient means to maintain her. The respondent is unable to maintain herself. The applicant is getting salary of Rs.25,874/- per month. The learned counsel for the respondent submits that the salary of the applicant would increase to a considerable extent after implementation of 7th Pay Commission recommendations with effect from 1st January, 2016. Considering the present

salary of the applicant and the income from the agricultural lands standing in the names of the father and grandfather of the applicant, status of the parties and bare requirements of the respondent for maintenance, in my view, the amount of Rs.5000/- per month would not be excessive or exorbitant. The applicant is liable to pay that much amount to the respondent towards maintenance.

15. The learned Judge of the Family Court rightly considered the facts of the case and rightly granted the maintenance to the respondent. The quantum of maintenance fixed by the learned Judge of the Family Court is not excessive or exorbitant. The impugned judgment and order need no interference. In the result, I pass the following order:-

ORDER

The Criminal Revision Application is dismissed.

**[SANGITRAO S. PATIL]
JUDGE**

