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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.343 OF 2015

Shri. Julfikarali Ahmed Sayyad	...Applicant
V/s.	
Sau.Shirin Julfikarali Sayyad & Ors.	...Respondents

Mr.Moinuddin A.Khan for Applicant.
Mr.Paresh More i/b. Mr.Ashwin Tripathi for Respondents.
Mr.P.H. Gaikwad, APP for the State.

CORAM : G.S. KULKARNI, J.

DATE : 18th JANUARY, 2018

P.C.:

Heard learned Counsel for the applicant.

2. Challenge in this petition is to an order dated 24th April 2015 passed by the learned Judge, Family Court at Nashik whereby an application as filed by the respondent-wife under Section 125(1) of the Code of Criminal Procedure has been allowed in the following terms:-

- “1. Petition is partly allowed.*
- 2. Opponent is directed to pay Rs.5000/- p.m. to the petitioner no.1 wife and Rs.3000/- to petitioner no.2 daughter Misbah, as allowance of maintenance from the date of application i.e. 05/07/2012.*
- 3. Opponent do pay Rs.3000/- towards the cost of the petition to the petitioners.”*

3. The marriage between the applicant and the respondent-wife had taken place on 28th May 2006 as per the Muslim religion. There is a daughter who is 10 years of age. There were disputes between the parties when the parties were residing at Navi Mumbai. On 23rd March 2010 the respondent had left the matrimonial house along with the minor daughter. It is not in dispute that the respondent had complained of harassment when the proceedings were initiated under Section 498-A of the Indian Penal Code. It is alleged that there was physical and mental torture to the respondent-wife for which she approached the Women Cell. It is not in dispute that the parties examined themselves as also they were cross-examined. The evidence to that effect has clearly come in the deposition of the respondent-wife. As also the same is not in any manner disputed in the cross-examination.

4. The learned Judge of the Family Court accordingly reached to a conclusion that there was a justifiable reason as also a reasonable cause for the respondent-wife to leave the matrimonial house and stay separately and thus, the respondent-wife is entitled to the amount of maintenance as granted.

5. Though the respondent-wife demanded maintenance of Rs.20,000/- per month i.e. Rs.10,000/- to herself and Rs.10,000/- for the minor daughter, the learned Judge of the Family Court, considering

the gross salary of the applicant of Rs.50,000/- per month and after deducting he was receiving an amount of Rs.47,800/-, has thought it appropriate in the facts and circumstances of the case to award an amount of Rs.5,000/- per month to the respondent-wife and Rs.3,000/- per month to the minor daughter.

6. Learned Counsel for the applicant in assailing the impugned order has made two fold submissions. Firstly he stated that the applicant was always ready and willing to cohabit with respondent-wife and maintain her and the minor daughter. It is the submission that without any sufficient or acceptable reason, on 23rd March 2010 the respondent-wife had left the matrimonial house. It is thus, submitted that the applicant is willing to cohabit with the respondent-wife and the minor daughter. There is no reasonable cause for the respondent-wife to maintain the petition under Section 125(1) of the Code of Criminal Procedure.

7. It is next submitted that there is no evidence whatsoever which can in any manner justify action on the part of the respondent-wife to stay away from the matrimonial house and thus, considering the clear provisions of Section 125(4) of the Code of Criminal Procedure, it is submitted that on this count also, the application of the respondent-wife was liable to be rejected. In support of his submission, the learned Counsel for the applicant has placed reliance on the decision in case of

Shiv Kumar Yadav vs. Santoshi Yadav ¹ and Haunsabai vs. Balkrishna².

8. On the other hand, learned Counsel for the respondent-wife has supported the impugned order. It is submitted that the learned Judge of the Family Court has taken into consideration all these contentions as urged on behalf of the applicant in the above arguments. It is submitted that there was reasonable and sufficient cause to the respondent-wife to reside separately and to leave the matrimonial house and thus, in such a situation, an application under Section 125 of the Cr.P.C. was clearly maintainable. It is further submitted that the amount of maintenance which has been granted is not disproportionate considering the salary which is being earned by the applicant.

9. Having heard learned Counsel for the parties and having perused the impugned order and the documents placed on record as also the evidence of respective parties, it is difficult to accept the submissions which are made on behalf of the applicant. Admittedly, in March 2010 the respondent-wife had left the matrimonial house. There appears to be genuine and justifiable reasons for the respondent-wife to do so in as much as the respondent-wife had complained of physical and mental cruelty and also there was an ill-treatment to the respondent-wife by the

1 LEX(CHH) 2004 2 7 decided on 04.02.2004

2 LEX(KAR) 1980 2 8 decided on 13.02.1980

family members of the applicant which has resulted into a complaint under Section 498-A of the Indian Penal Code being lodged against the applicant and his family members. Moreover, the respondent-wife had also approached the Women Cell to make complaint about physical and mental harassment. All these facts are proved in evidence before the Family Court. If these are the reasons, then it cannot be said that there are not reasonable or justifiable reasons for respondent-wife to stay away from the matrimonial house and/or part from the company of the applicant. It is also not in dispute that the respondent-wife along with the minor daughter is now staying separately and she has no source of income whatsoever.

10. In passing the impugned order, the learned Judge of the Family Court has taken into consideration all the requirements of law as also the facts of the case which justify not only the maintainability of the application of the respondent-wife under Section 125(1) of the Cr.P.C., but also grant of amount of maintenance as directed. Learned Judge of the Family Court has taken into consideration the income of the applicant as also the basic costs of living which need to be compensated to an extent by the applicant to the respondent. In any event, the learned Counsel for the applicant is not correct in his submission that the amount which has been awarded is unreasonable. Considering the salary/income of the applicant, it cannot be said that the maintenance as

awarded is unreasonable.

11. As regards the decisions as relied on behalf of the applicant, the principles of law which are recognized in deciding the said cases cannot be disputed. However, in the facts of the present case when there are sufficient reasons for the respondent-wife to stay away from the applicant and the availability of sufficient material to support the contention in as much as the respondent-wife had made a complaint under Section 498-A of the IPC as also approaching the Women Cell for complaining against the physical and mental harassment by the applicant, in my opinion, the applicant is not expected to foist upon the respondent-wife a compulsory cohabitation against her wish. It cannot be disputed that the respondent-wife would be well within her rights to stay separately to avoid any harassment as she has contended and more particularly when she is also looking after the minor daughter. When there is sufficient material available on record which justifies the respondent to stay separately, the decisions as relied on behalf of the applicant in the facts and circumstances of the case squarely are not applicable.

12. In the circumstances, the application is without any merit. It is, accordingly, dismissed. No costs.

13. Learned Counsel for the applicant states that the amount of arrears of maintenance has already been deposited before the Family Court in execution proceedings upto June 2017 and that the amount now due and payable from the month of July 2017 till date, shall be deposited by the petitioner within a period of one month from today. Subject to deposit of the balance amount within the period so directed, the execution proceeding shall remain stayed.

14. Needless to observe that in case of default on the petitioner depositing the said amount within the period as directed, it will be permissible for the respondent to proceed with the execution.

15. At this stage, learned Counsel for the applicant seeks a blanket stay on the execution proceeding. In the facts and circumstances of the case, the request cannot be accepted. The same is rejected.

[G.S. KULKARNI, J.]