

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL REVISION NO.65/2016

Irfan Khan s/o Haroon Khan ..vs.. Zeenat Kausar w/o Irfan Khan & anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. M. Ejajul, Advocate for applicant.

CORAM : V.M. DESHPANDE, J.

DATED : JANUARY 9, 2018

1. Heard Mr. M. Ejajul, Advocate for applicant.
Counsel for the non applicants is absent.

2. The non applicants who are wife and minor son of the applicant, filed an application under Section 125 of the Code of Criminal Procedure for maintenance. The said was registered as Petition E-150/2013 on the file of learned Judge of the Family Court, Akola. According to the pleadings in the application under Section 125 of the Code of Criminal Procedure, marriage between applicant and non applicant no.1 took place on 11.06.2010 as per the rites and customs prevailing in Muslim community. Non applicant no.2 is the son born from the said wedlock. The non applicant no.1 was subjected to cruelty at the hands of the present applicant. She was not provided with proper foods. Resultantly, there was miscarriage of the non applicant no.1. She was also subjected to physical atrocities. A report was lodged with Police Station and an offence was registered under Section 498-A read with Section 34 of the Indian Penal Code.

3. It is also stated in the application that she was also required to file a complaint under the provisions of the Protection of Women from Domestic Violence Act, 2005 in the competent Court. It is stated that the non applicant no.1 is a *Pardanasheen* woman and is not having any source of income. The applicant is having agricultural land and is also doing business of property. His income is Rs.50,000/- per month. Therefore, maintenance at the rate of Rs.15,000/- was claimed for the non applicant no.1 and Rs.5,000/- for the non applicant no.2. The application was contested by the applicant by filing reply by pointing out that it is the non applicant no.1 who used to take up quarrels with the family members of the applicant. It is also stated that the applicant is depositing Rs.1,000/- per month and Rs.500/- per month towards maintenance amount for the non applicant nos. 1 and 2 regularly.

4. The applicant and non applicant no.1 entered into the witness box in order to substantiate their claim. The learned Judge of the Family Court found that the applicant has neglected to maintain his wife and child.

5. The relations as husband and wife are still subsisting. It is the duty of the applicant to maintain his wife and minor child. It is an admitted position that the non applicant no.1 is a *pardanasheen* Muslim woman and is not having any independent source of income and is wholly dependent on her husband. The learned Judge of the Family

Court has noticed that the applicant is having Maruti car. Therefore, it cannot lie in the mouth of the applicant that he is a labour only. Insofar as the claim of maintenance is concerned, in my view, the learned Judge of the Family Court has correctly appreciated the evidence that is brought on record and has reached to the conclusion that the non applicant is entitled to maintenance of Rs.2,000/- and Rs.1,500/-. No doubt true, the applicant is paying Rs.1,000/- and Rs.500/- in the domestic violence proceedings. Merely because the non applicant nos.1 and 2 are getting maintenance at the rate of Rs.1,500/-, that by itself does not disentitle them to receive the maintenance from the applicant. Looking to escalation in the price index, payment of Rs.1000/- and Rs.500/- is not sufficient and therefore the Court below has correctly reached to the conclusion that in addition to Rs.1,000/- and Rs.500/-, the applicant is liable to pay maintenance as ordered in the impugned order.

No case is made out for interference by the applicant. The revision application is therefore rejected.

JUDGE