

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

CRIMINAL REVISION APPLICATION NO.225 OF 2005

Anand s/o Rambhau Lagde
age 27 yrs, Occ. Labourer,
R/o. Bhimnagar, Bhavsingpura,
Aurangabad.Applicant...

VERSUS

Sandhya w/o Anand Lagde,
age 24 yrs, Occ. Household,
Labourer, r/o c/o Shobha Yadav,
In front of Dnyansagar Vidya Mandir,
Vishranti Nagar, Railway Station,
Garkheda Parisar, Aurangabad ...Respondent..

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Advocate for Applicant : Miss Kazi Fatima
None present for respondent.

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CORAM : V.K. JADHAV, J.
Dated: February 07, 2019

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ORAL JUDGMENT :-

1. Being aggrieved by the common Judgment and order passed by the learned Principal Judge, Family Court, Aurangabad dated 3.5.2005 in Petition No.A-162/2004 filed by the petitioner/husband under section 9 of the Hindu Marriage Act for restitution of conjugal rights and petition No.E-429/2004 filed by the respondent-wife alongwith her daughter for grant of

maintenance under section 125 of Criminal Procedure Code.

2. Brief facts, are as follows :-

a) Marriage between the petitioner and respondent was solemnized on 13.4.2000 at Aurangabad, and after marriage, respondent-wife started cohabiting with the petitioner. She gave birth to a daughter. According to the petitioner-husband wife stayed happily for 3 to 4 months and thereafter she started quarreling with him on flimsy reasons and used to go to her parents house. She had behaved with him in a rude manner at the instance of her mother and uncle. Even she was not giving respect to the elder members nor doing domestic work properly. Even thereafter petitioner-husband started living separately from his parents, but there was no change in her behavior. Even on 28.9.2003 the respondent-wife has attempted to commit suicide without any reason. In respect of the said incident both of them filed complaints against each other. Respondent-wife

aaa/-

thereafter started residing with her parents. The parents of the petitioner-husband made several efforts to bring her back to matrimonial home, however, respondent-wife was reluctant to join the company of the respondent/husband. Even, the petitioner/husband had issued a legal notice to her, but she did not join the company of petitioner-husband.

b] Respondent-wife on the other hand contended that the petitioner and his relatives used to demand Rs.50,000/- from her for starting a grocery shop. They used to give threats to her on that count. On 28.9.2003 at about 06.00 am when she was in dark sleep, the petitioner-husband poured two liters of kerosene on her person and tried to set her on fire. She woke up, cried loudly and ran away from house and lodged the complaint. The petitioner and his relatives used to threaten her that they would kill her if she failed to bring Rs.50,000/- from her parents and finally dragged her out of the house by keeping only apparels on her person. Respondent-wife had shown her ready and

willingness to join his company. Respondent-wife has claimed maintenance under section 125 of Criminal Procedure for herself and also for her daughter. According to her, the petitioner-husband and his family members are having 4 to 5 shops. They are earning good income. She has no independent source of income. She is educated up to 3rd standard. She is unable to maintain herself and her daughter. Petitioner-husband is getting rent of 10 rooms and also having iron shop and cutlery shop and his father is a government servant. They have their own residential house. Thus, the petitioner-husband is in a position to pay Rs.3,500/- pm. towards their maintenance.

3. Both the parties lead their oral and documentary evidence in support of their rival pleadings. The learned Principal Judge of the Family Court, Aurangabad has dismissed the petition No.A-162/2004 filed by petitioner-husband for restitution of conjugal rights and partly allowed the Petition bearing No.E-429/2004 and directed the petitioner/husband to

pay Rs.500/- (Rs. Five Hundred) to each of the petitioner no.1 and 2 as maintenance alongwith costs of Rs.500/-. Hence, This Criminal Revision Application.

4. Learned counsel for the petitioner/husband submits that, the petitioner-husband restricts this revision application only to the extent of quantum of the maintenance. Learned counsel submits that, respondent-wife is running a tea stall and earning Rs.50/- per day. The petitioner-husband has contended that she is running a tea stall and mess and earning Rs.3000/- to 5,000/- p.m., however, the learned Judge of the Family Court has not considered the same. Learned counsel submits that, petitioner-husband is doing mason work and getting Rs.80/- per day and he is not getting said work regularly. Learned counsel submits that the learned judge of the family court has granted exorbitant amount of maintenance. So far as petition filed by the husband for restitution of conjugal rights is concerned, learned counsel fairly admits that even though wife had shown her ready and willingness

to join the company of the petitioner-husband, the petitioner-husband has refused to take her to his residential house for further cohabitation.

5. None present for the respondent-wife.

6. So far as quantum of maintenance is concerned, I do not find any fault in the impugned judgment and order passed by the learned Judge of the family Court, Aurangabad. It has come on record that the petitioner/husband has no other responsibility. His father is also in service. Admittedly, the petitioner-husband has his own house. The learned Judge of the Family Court has rightly observed that since the respondent-wife was residing with the petitioner-husband for near about three years, she would be the best witness to depose about the source of income and actual earning of her husband. According to the respondent-wife, petitioner is earning Rs.100/- to 125/- per day from his ironing shop. Thus, considering the entire aspect, the learned Judge of the Family Court,

Aurangabad has carved out reasonable amount of maintenance by considering the status of the parties and their daily needs. Respondent no.2 was two years old at the time of filing of the petition. At present she is more than 12 to 13 years of age. Thus, considering the entire aspect of the case, I find no reason to interfere in the well reasoned judgment and order passed by the Principal Judge of the Family Court, Aurangabad. The learned Judge has considered the evidence and accordingly rightly dismissed the petition filed by the husband seeking decree of restitution of conjugal rights. No interference required. Hence, following order.

O R D E R

1. Criminal revision application is hereby dismissed. Rule discharged.
2. Criminal Revision application accordingly disposed off.

(V.K. JADHAV, J.)

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