

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

CRIMINAL REVISION APPLICATION NO. 63 OF 2005

Shaikh Basid s/o Sk. Majid
C/o. Kadir Sk. Mehboob,
Galli No.3, Munnabhai's House,
Near Amir Kirana Store,
Near Sameer Bhai S. T. D. Shop,
Rahmaniya Colony,
Aurangabad.

... Applicant

Versus

1. The State of Maharashtra
through G.P. of High Court,
Bench at Aurangabad.
2. Yasminabano w/o Sk. Basid,
age - 20 yrs., Occu. household,
r/o C/o Sk. Kadir s/o Sk. Mehboob,
Gali No.11, Rahmaniya Colony,
beside Hari Bulding,
Aurangabad.

... Respondents
(R.No.2 Orig. Petitioner)

.....
Mr. C. V. Joshi h/f Mr. S. P. Tilve, Advocate for the Applicant.
Mr. B. V. Virdhe, APP for Respondent No.1.
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**CORAM : V. K. JADHAV, J.
DATED : 06th FEBRUARY, 2019**

ORAL JUDGMENT :-

1. Being aggrieved by the common judgment and order dated
09.02.2005 passed in Petition No. A-239 of 2004 filed by the

present applicant seeking restitution of conjugal rights and Petition No. E-311/2004 filed by the respondent-wife seeking maintenance under Section 125 of the Code of Criminal Procedure, 1973, the present Criminal Revision Application has been preferred by the applicant-husband.

2. Brief facts giving rise to the present Criminal Revision Application are as follows:

a. Marriage between the applicant-husband and the respondent-wife was solemnized on 05.05.2002 at Aurangabad and after marriage, they started residing together. As per the applicant-husband's case, the respondent-wife lived with him for five to six months till November, 2002 and left his house thereafter. In fact, she has lived with him properly for only 15 to 20 days. She used to quarrel with the parents, the brother and the sister of the applicant-husband and even then, all of them tried to convince her but there was no change in her behaviour. It is the case of the applicant-husband that lastly, on 05.02.2004, the respondent-wife left his house and started residing with her parents and afterwards, failed to join his company though he made efforts personally and through

his parents and one Malik Bhai. The respondent-wife is living at her parents house on her own accord. The applicant is a young person. He needs her company and accordingly, he filed the application for restitution of conjugal rights.

b. According to the respondent-wife, she lived with the applicant-husband for one and a half year. His mother used to ill-treat her and beat her and he also used to ill-treat her on account of an unlawful demand of Rs.10,000/- and that the applicant also used to beat her on the say of his mother. Before seven months, he had extended beatings to her on the say of his mother and dragged her out of the house. According to her, she is ready to join his company if he keeps her separate and executes an undertaking for giving good treatment to her as she apprehends danger to her life. Respondent-wife also filed an application for grant of maintenance under Section 125 of Cr.P.C. on the same grounds. She is unable to maintain herself and she has no independent source of income. The applicant-husband is a mason. He is getting Rs.250/- per day. He is also having his own house. His brother and father are earning. He has no responsibility on his shoulder and thus, he is in a position to pay Rs.1,500/- per month to her. The applicant-husband denied his

earning and further submitted that he is doing labour work and getting Rs. 50/- per day. The applicant-husband has repeated the allegations made in his application seeking restitution of conjugal rights that the respondent-wife resides with her parents without any just cause and as such, she is not entitled for maintenance. She is also able to maintain herself.

c. Both the parties led oral and documentary evidence to substantiate their rival contentions. The learned Judge of the Family Court, by the common judgment and order dated 09.02.2005, dismissed the Petition No. A-239 of 2004 filed by the applicant-husband for restitution of conjugal rights and partly allowed the Petition No. E-311 of 2004 and accordingly directed the applicant-husband to pay maintenance of Rs.700/- per month to the respondent-wife from the date of the petition along with costs of Rs.700/-. Being aggrieved by the same, the applicant-husband has preferred this Criminal Revision Application.

3. Learned counsel for the applicant-husband submits that the respondent-wife is staying with her parents without any just cause. The applicant-husband therefore initiated proceedings for

restitution of conjugal rights before the Family Court. The relations between the applicant-husband and the respondent-wife are cordial and the same has been admitted by the respondent-wife also. If this is so, there is no reason for her to stay with her parents and demand separate maintenance. Learned counsel submits that the applicant-husband cannot stay separately by leaving his old aged parents. The learned Judge of the Family Court has considered only the case of respondent-wife and the submissions made on her behalf, ignoring the pleadings, evidence and the submissions made on behalf of the applicant-husband. The impugned order is therefore bad in law and the same is not sustainable in the eyes of law. Learned counsel submits that this Criminal Revision Application deserves to be allowed by setting aside the common judgment and order passed by the Family Court and further, the petition filed by the applicant-husband seeking a decree of restitution of conjugal rights may be allowed and the petition filed by the respondent-wife seeking maintenance is liable to be rejected.

4. None present for the respondent-wife.

5. I have also heard learned APP for the respondent-State.

6. The applicant-husband filed a petition seeking the relief of restitution of conjugal rights only on the ground that even though his relations with his wife are cordial, she is staying with her parents without any just cause. As against this, the respondent-wife contends that she has no complaint against the applicant-husband, however, her in-laws are giving trouble to her and at their instance, the applicant-husband is subjecting her to harassment. In our society, importance is given to the wishes of the husband. Even if the wife is not comfortable with her in-laws, she has to follow the wishes of her husband and stay there along with the parents of her husband in order to respect the wishes of her husband. However, in the changing scenario of the lifestyle and considering the developing concept of nuclear family, importance is also required to be given to the wishes of the wife. If the wife is not comfortable because of the approach and attitude of the parents of her husband and the treatment given to her by them, and if she resides with her parents because of the said reason, in my considered opinion, the wife has just cause to live separate and demand maintenance. The learned Judge of the Family Court has considered this aspect in a different manner. However, the learned Judge has observed that

the applicant-husband has failed to substantiate his contention that the respondent-wife is staying with her parents without any just cause. In view of the same, I do not find any mistake in the judgment and order passed by the Judge of the Family Court rejecting the application filed by the applicant-husband seeking restitution of conjugal rights.

7. So far as the quantum of maintenance is concerned, the learned Judge of the Family Court has considered the income of the applicant-husband, his liabilities and responsibilities and after having due regard to the status of the parties, rightly carved out the amount of maintenance which appears to be just and reasonable. There is no reason to interfere. I find no substance in this Criminal Revision Application. Hence, the following order:

ORDER

Criminal Revision Application No. 63 of 2005 is hereby dismissed. Rule stands discharged.

(V. K. JADHAV, J.)

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