

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FAMILY COURT APPEAL NO. 4 OF 2018

Ishrat Parveen w/o Shaikh Raoof
Age 32 Years. Occup. Ladies Tailors
R/o, C/o Shaikh Abbas S/o Shaikh Razzak,
Sameera Bagh Nanded.

... **APPELLANT**
(Orig. Respondent)

VERSUS

Shaikh Raoof s/o Shaikh Chunnimiyan,
Age 36 years, Occu. Driver.
R/o Aksa Colony Ardhapur Tq. Ardhapur
Dist. Nanded.

... **RESPONDENT**
(Orig. Petitioner)

...
Mr. M. M. Parghane, Advocate for Appellant.
Mr. G. R. Syed, Advocate for Respondent.
...

CORAM : **T. V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

DATE : 22nd February, 2019.

JUDGMENT: (Per T. V. Nalawade, J.)

. The appeal is admitted. Notice after admission is made
returnable forthwith. Heard both the sides for final disposal.

2 The appeal is filed to challenge the decision of the Family Court, Nanded given in Petition No.A 403 of 2014. The proceeding was filed for restitution of conjugal rights by the Respondent, husband against the Petitioner and the decree is given by the Family Court.

3 The submissions made show that the parties are Muslims and their marriage was solemnized on 22nd May, 2005. Appellant is blessed with one son and one daughter. It is the case of the husband that right from beginning, the wife was saying that she wanted to marry rich person, but she was given in marriage to the present Respondent against her desire. It is his contention that at the time of both pregnancies, the wife overstayed in the house of her parents and after the birth of second issue, she did not show interest to resume the cohabitation. It is his contention that when he made attempt to bring her back, she refused to return on 11th November, 2010 and she gave threat of suicide and criminal case. It is his contention that the wife then gave Fir against him and case came to be filed against him for the offence punishable under Section 498-A read with 34 of the Indian Penal Code.

4 The wife contested the proceeding by contending that ill-treatment was given to her by the husband as his demand of Rs.50,000/- was not met with. It is her contention that she was driven out of the matrimonial house by the husband and so she was required to give report to police against the husband. It is her case that the husband was not providing anything for her maintenance and for the maintenance of children.

5 It is not disputed that the present Respondent married second wife on 17th October, 2010. It is clear that only after the second marriage of the husband, she approached police and report was given against the husband. It is also not disputed that she did not approach the Court for even maintenance. The Trial Court has considered some record like cross-examination of the wife recorded in Regular Criminal Case No.20 of 2011, which was filed against the husband in aforesaid FIR. In that proceeding, she had admitted that she was living with her parents on her own accord and in the past maintenance proceeding, which was filed by her was not prosecuted by her. It appears that the Court felt that she was expressing that she

was not ready to return to matrimonial house and the Court gave the decree of restitution in favour of husband.

6 Though the parties are Muslims, if husband marries second wife, it gives sufficient cause to the wife to say that she would live separate from the husband. This Court holds that such circumstance gives justification to the wife for separate residence. This legal position is not at all considered by the learned Judge of the Family Court. Further, there are circumstances that the husband married second wife first and after that the present Appellant had approached the police. Only after that the husband filed proceeding for restitution of conjugal rights. From all these circumstances and the circumstance that the wife did not show any interest in getting maintenance order even when she is required to spend for two minor issues, are sufficient to infer that the wife was not at fault. The husband did not come with the case that he was taking care of even the children. Thus, the proceeding was filed by the husband with some ulterior motive and there were no *bonafides* showing that he had interest in bringing the first wife back to the matrimonial house. Due to all these circumstances, this Court holds that the learned

Judge of the Family Court has committed serious error in giving the decree. In the result, the following order is passed:

ORDER

- I. The appeal is allowed.
- II. The judgment and decree of Family Court, Nanded delivered in Petition No.A 403 of 2014 is hereby set aside. The petition, which was filed by the present Respondent for restitution of conjugal rights stands dismissed.
- III. Pending civil application stands disposed of.

[SUNIL K. KOTWAL, J.]

[T. V. NALAWADE, J.]

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