

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

CRIMINAL REVISION APPLICATION NO. 114 OF 2005

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Shaikh Hanif s/o Shaikh Hussain
Age 33 years, Occ. Labourer,
R/o. Shahnorwadi, Shams Nagar
In front of Saba Medical Stores
Near Light D.P. Aurangabad

Applicant.
(orig. respondent.)

Versus

1. Sultana Begum w/o Sk. Hanif
Age 27 years, Occ. Household
R/o. Behind Bambai Training School,
C/o. Afsar Khan Pathan,
Bhadkal Gate, Aurangabad
2. Heena kausar d/o Sk. Hanif,
Age 13 years, Occ. Education
3. Shaikh Shoeb s/o Sk. Hanif
Age 11 years, Occ. Educational ...Respondents..
(orig. petitioners.)

R. Nos. 2 and 3 are minors
and U/g of respondent No.1 their
real mother

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Mr. S.S. Varma, advocate for the applicant (appointed)
Mr. R.J. Ranshoor, advocate for respondent Nos. 1 to 3-
absent.

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CORAM : V. K. JADHAV, J.
DATED : 7th MARCH, 2019

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JUDGMENT :-

1. By way of this criminal revision application, the applicant challenges the judgment and order dated 27.01.2005 passed by the Principal Judge, Family Court, Aurangabad in Petition No. E-174 of 2004 thereby directing the petitioner to pay maintenance amount @ Rs.800/- p.m. to respondent No.1 and Rs.500/- p.m. to the respondent No.2, payable from the date of petition. In so far as the claim in respect of respondent No.3 is concerned, the same is rejected. The applicant is directed to pay costs of Rs.800/- to the respondent No.1 and shall bear of his own.

2. Brief facts giving rise to the present criminal revision application, are as follows:-

a) The marriage between applicant and respondent No.1 was solemnized in the year 1990. After the marriage, she cohabited with the applicant for 7 to 8 years. She gave birth to two children i.e. respondent Nos. 2 and 3 herein. The applicant and his relatives used to beat her, abuse her and demanded

aaa/-

Rs.1,00,000/- for construction of house. She informed about the same to her parents. The parents of respondent No.1 tried to convince them, but there was no change in their behaviour.

b) Four months prior to lodging of complaint by respondent No.1, the applicant and his relatives came to her parent's house, abused her and demanded Rs.1,00,000/- and told her not to join the matrimonial home without money. Respondent No.1 again went at matrimonial home, but the applicant refused to allow her in the matrimonial home without money. On 20.2.2004, respondent No.1 was driven out of house by the applicant and his relatives and since then respondent is living at her parents house. She has also filed a complaint for the offences punishable under Sections 498-A, 323, 505, 506 r.w. 34 of I.P.C. against the applicant and others. In the meantime, the applicant has performed second marriage.

c) The respondent No.1 was unable to maintain

herself and minor children. She has no source of income. The applicant is having house at Shahnoorwadi and also house at Satara. The applicant has given the rooms on rent and getting the rent. The applicant is plumber by occupation and earning Rs.20,000/- p.m. Therefore, the applicant is in a position to pay Rs.1,500/- p.m. to each of the respondents-original applicants.

d) The applicant resisted the claim of respondent No.1 by filing his say at Exh.7. It was submitted that on 5.10.2003, he gave divorce to her and, therefore, their marriage is not subsisting and petition for grant of maintenance is not tenable. He has admitted the marriage and birth of children. He has denied all the allegations made by respondent No.1. The allegations in respect of beating, ill-treating and demanding money were specifically denied by the applicant. The applicant had not disputed the fact of performance of second marriage. The contention of respondent No.1 of receiving rent was denied. On the contrary, it was contended that

respondent No.1 is running S.T.D. booth since last 3 years, which was in the name of her father and she is earning Rs.3000/- to Rs.4000/- p.m. It was submitted that parents of respondent No.1 are having bakery and she is also selling bakery items and, therefore, she is in a position to maintain herself and the child. The applicant therefore, prayed for dismissal.

e) After hearing both sides, the learned Principal Judge, Family Court, Aurangabad has partly allowed the Petition No. E-174 of 2004 thereby directing the applicant to pay maintenance amount @ Rs.800/- p.m. to respondent No.1 and Rs.500/- p.m. to the respondent No.2, payable from the date of petition. In so far as the claim in respect of respondent No.3 is concerned, the same is rejected. The applicant is directed to pay costs of Rs.800/- to the respondent No.1 and shall bear of his own. Hence, this criminal revision application.

3. Learned counsel for the applicant submits that no proper opportunity has been given to the applicant, as

he was not allowed to canvass his case fully, adequately and finally because of the approach adopted by the learned Judge of the Family Court in a lope-sided manner, tilting the balance in favour of the respondents herein and quite antagonistic manner to the applicant. The theory of divorce was clearly pleaded in the written statement. As is customary, the Talaq is given orally and the same is normally followed by a written divorce. The Family Court did not allow even the statement on oath to be recorded on the point of Talaq, as the applicant was constantly stopped not to agitate the proof of Talaq by the word of mouth on oath, as he was not allowed to put answers to the queries made by his advocate. The learned Judge of the Family Court has not followed the provisions of Section 112 of the Indian Evidence Act. Learned counsel submits that though it has been pleaded that third child is not of his paternity, but the learned Judge has totally ignored the provisions of Section 112 of the Evidence Act and made observations that the petitioner has made a false statement that he is not the father of third child. There

is error committed by the learned Judge in imposing fine of Rs.800/- when the provisions of law under which the present proceedings are filed by respondent No.1, do not at all permit to impose any such fine or costs. The respondent No.1 is falsely covering up her own sin of imputing paternity of an illegal child. The learned counsel for the applicant, thus submits that the criminal revision application deserves to be allowed.

4. I have heard learned counsel for the applicant. None appears for the respondents though served. I have perused the memo of revision application, annexures thereto.

5. Respondent-wife has examined herself at Exh.16. She has deposed that she was treated well for initial period of 7-8 years. She gave birth to children during that period. Thereafter she was subjected to harassment on account of non-fulfillment of the demand of Rs.1.00 lacs. She had filed a complaint under section 498-A of IPC against her husband. She has further deposed that

applicant-husband denied paternity of the child and also he started living with one Chandani Begum. She had deposed about sound financial position of the applicant-husband and also that she is unable to maintain herself and to maintain her children. She also deposed that applicant-husband has refused and neglected to maintain her. She has thus claimed Rs.1,500/- for each of them towards the maintenance. She has also examined two witnesses in support of her contentions. Evidence of respondent-wife and her witnesses is consistent, reliable and trust worthy. It further appears that the applicant-husband though his examination-in-chief has been recorded in part, the further examination-in-chief was deferred as the applicant-husband wanted to file an application for amendment. It further appears that at the same time the applicant-husband had filed an application seeking amendment in the say/ws at exh.33 and the learned Judge of the Family Court has rejected the same. The learned Judge of the family court in paragraph no.12 of the judgment has observed that even though his

application seeking amendment in the say/ws came to be rejected, subsequently, the applicant-husband has filed an applications for adjournment 2 to 3 times. It was granted subject to costs and lastly his application at exh.15 came to be rejected by order dated 28.12.2004. Applicant-husband filed 6 to 7 applications for adjournment and also prayed to stay the proceedings as he has challenged the order before the revisional court. Applicant-husband neither brought stay of the revisioinal Court nor completed his examination-in-chief and adduced any further evidence.

6. It appears that the applicant-husband has treated the respondent-wife with cruelty. Consequently, respondent-wife has just cause to reside separately and demand the maintenance. Even though, civil litigation was going on between the applicant-husband and father of the respondent-wife, injunction application filed by the applicant-husband came to be rejected. It has been observed by the Court while rejecting the said application which is placed on record vide exh.7 that the

applicant-husband has failed to prove before the court that he gave money to the father of the respondent-wife. Thus, there is sufficient evidence on record to show that respondent-wife has just cause to live separately and demand maintenance and so also refusal and neglect on the part of the applicant-husband to maintain the respondent-wife and his children. The applicant-husband has failed to prove before the family court that he gave divorce to the respondent-wife. The respondent-wife is unable to maintain herself and she has no independent source of income. Nothing has been brought on record in cross-examination about her earning capacity. The respondent-wife has deposed about the source of income of the applicant-husband. Though, there are no documentary evidence placed on record to substantiate the same, however, the learned Judge of the family Court has granted a very meager amount of maintenance @ Rs.800/- p.m. to respondent no.1 wife and Rs.500/- p.m. to respondent No.2 Daughter Heena. Since the respondent-wife has admitted before the Family Court in her cross-

examination that respondent no.3 is staying with the applicant-husband, the learned Judge of the family Court has rejected his application seeking maintenance. It is pertinent to note that, though the applicant-husband has denied paternity of the children, respondent no.3 herein is admittedly in his custody. In view of the same, I find no substance in the claim put forth by the applicant-husband. In the facts of the case, no purpose would be served in remanding the matter to the Family Court under the pretext that the applicant-husband had no sufficient opportunity to substantiate his contention.

7. I find no substance in this Criminal Revision application. Hence, I proceed to pass the following order.

O R D E R

Criminal Revision Application No. 114 of
2005 is hereby dismissed. Rule discharged.

(V. K. JADHAV, J.)

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