

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

930 CRIMINAL REVISION APPLICATION NO.122 OF 2005

Mahendrakumar @ Pappu s/o Parshuram Rathod
Age 23 years, Occu. Agriculture and Service,
R/o Arihantnagar, House No. D-11,
Aurangabad, Taluka and District Aurangabad. ... Petitioner

Versus

Priyanka w/o Mahendrakumar @ Pappu Rathod
Age 21 years, Occu. Household,
R/o Sanjaynagar, Mukundwadi (Slum Area)
Galli No. 16, Aurangabad,
Taluka and District Aurangabad. ... Respondent
(Ori. Petitioner)

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Advocate for the revision petitioner : Mr. Jitendra V. Patil h/f
Mr. P. R. Katneshwarkar.

Advocate for respondent-sole : Mr. Mujtaba Gulam Mustafa.

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**CORAM : V. K. JADHAV, J.
DATED : 17th JANUARY, 2019**

ORAL JUDGMENT :-

1. Being aggrieved by the common judgment and order in petition no. A-333 of 2003 seeking decree for restitution of conjugal rights and petition no. E-112 of 2004 for grant of maintenance under Section 125 of the Criminal Procedure Code, 1973 passed by the In-charge Judge, Family Court, Aurangabad, this Criminal Revision Application has been preferred.

2. Brief facts giving rise to these two petitions are as follows:

a. The marriage between applicant and respondent was solemnized on 27.05.2003 at Jambhala. After marriage, respondent-wife started cohabiting with the applicant-husband. However, they hardly lived together for eight days. The applicant-husband has thus initiated proceedings for restitution of conjugal rights vide petition no. A-333 of 2003. It is contention of the applicant-husband that on 15.06.2003, the respondent-wife went to her parents' house and though he tried to bring her back, she had refused to go with him. She was saying that the applicant-husband is not smart. According to the applicant-husband, he is handicapped and in need of company of the respondent-wife. She has deprived him of sexual pleasure. On the other hand, she has lodged a criminal case under Section 498-A of IPC. Respondent-wife has strongly resisted the said petition seeking restitution of conjugal rights by filing say at exhibit 9. She has admitted the marriage. According to her, the applicant-husband never come to take her back to the matrimonial home. On the other hand, he has harassed her by filing complaint in police station. It is her contention that the applicant-husband and his relatives dragged her out of the matrimonial house and threatened her that they

would burn her if she joined his company. The father of the applicant-husband used to consume liquor, abuse and beat her and also to encourage the applicant husband to beat her. She is ready to join the company of her husband, but he should give an undertaking for her life on stamp paper. On all counts, she prayed for dismissal of the petition.

b. Respondent-wife had also filed proceedings for maintenance bearing petition no. E-112 of 2004. She pleaded almost the same facts as pleaded by her in petition no. A-333 of 2003 and further stated that she is unable to maintain herself and she has no independent source of income. The applicant-husband has three acres of irrigated land at Jambhala and five acres of irrigated land at Kesapuri. He is also doing service in a library on monthly salary of Rs.3,000/-. He is having a house at Aurangabad consisting seven rooms. He is also having another house at Sanjay Nagar consisting six rooms and he is earning Rs.2000/- to Rs.3,000/- as rent from the said house properties. Therefore, he is in a position to pay Rs.1500/- per month towards maintenance. The applicant-husband resisted the said application for maintenance by filing his say. He has pleaded the same facts as per the pleadings in the petition

seeking restitution of conjugal rights. He denied the ill-treatment being extended to the respondent-wife. According to him, she ran away from his house and afterwards failed to join his company though he made efforts to bring her back to matrimonial home. According to him, she earns Rs.50/- to Rs.60/- per day. The house or land is not in his name. He is handicapped. He is not getting any income. He can maintain her at his house however, he is not in a position to pay separate maintenance to her. She has filed false petition.

c. Both the parties led oral and documentary evidence in support of their rival contentions. By the common judgment and order dated 21.07.2004, learned In-charge Judge of the Family Court, Aurangabad dismissed petition no. A-333 of 2003 seeking restitution of conjugal rights and partly allowed petition no. E-112 of 2004 awarding maintenance amount at the rate of Rs.400/- per month to the respondent-wife alongwith costs of Rs.400/-. Hence this Criminal Revision Application.

3. Learned counsel for the applicant-husband submits that the marriage was not consummated. Respondent-wife stayed with the

applicant-husband only for eight days and left the house on her own. Though the applicant has given her a bonafide offer and tried his best to bring her back for further cohabitation, the respondent-wife has foiled all his attempts. Thus, the applicant-husband was constrained to file the petition for restitution of conjugal rights. He has no source of income. The learned Judge of the Family Court has not correctly appreciated the evidence in its proper perspective which resulted into miscarriage of justice. He submits that this Revision Petition and the petition filed by the applicant husband bearing No.A-333 of 2003 deserved to be allowed and the petition filed by the respondent wife bearing petition no. E-112 of 2004 is liable to be dismissed by setting aside the order of maintenance passed by the In-charge Judge of the Family Court, Aurangabad.

4. Learned counsel for the respondent submits that the respondent-wife was subjected to ill-treatment and she could not tolerate the same even for eight days. Even though respondent-wife has shown her willingness to join his company, the applicant-husband has refused to take her back. The applicant-husband has not made a bonafide offer. Learned Judge of the trial court has rightly appreciated the same and accordingly dismissed the petition

seeking a decree of restitution of conjugal rights. So far as the quantum of maintenance is concerned, though the applicant-husband claims to be a handicapped person, the learned Judge of the Family Court has rightly considered his responsibilities, his house properties, agricultural properties and carved out maintenance at the reasonable rates as per status of the parties to the litigation. No interference is required.

5. On perusal of the impugned judgment and order, I find no fault in it. According to the respondent-wife, she was subjected to ill-treatment and the applicant-husband has given life threats to her. In the backdrop of these facts, respondent-wife can reside separately and claim maintenance. On the basis of the evidence adduced by the parties, learned Judge of the Family Court has repeatedly observed that the offer made by the applicant-husband is not bonafide one. Even the learned Judge has referred the parties to the marriage counselor. However, the marriage counselor informed that settlement was not possible. Then the learned Judge has himself tried to convince the applicant-husband, as he has filed the proceedings for restitution of conjugal rights, but the applicant refused to take her back though the respondent-wife was ready to

join his company. The applicant-husband has imposed a condition that firstly she should withdraw all the pending proceedings. Learned Judge has tried his best to convince him that if the family life is happily going on then certainly she would withdraw both the cases. But the applicant-husband has behaved in adamant manner and refused to take her back. The learned Judge of the Family Court has therefore rightly held that the offer made by the applicant-husband is not *bonafide* one and accordingly dismissed the petition seeking restitution of conjugal rights. No interference is required.

6. So far as the quantum of maintenance is concerned, I find no fault in the same. Though the applicant-husband is handicapped, the learned Judge of the Family Court had an opportunity to see as to whether he is in a position to earn. Further, the respondent- wife is the best witness to tell about the occupation and income of her husband. Thus, considering the entire aspect of the case, the learned Judge of the Family Court has carved out maintenance at the rate of Rs.400/- per month which is quite reasonable and corresponding to the status of the parties to the litigation. No interference is required. Hence, the following order :

ORDER

I. The Criminal Revision Application is hereby dismissed.
No costs.

II. Rule stands discharged.

(V. K. JADHAV, J.)

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