

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

CRIMINAL REVISION APPLICATION NO.182 OF 2019

1. Mahesh Baliram Mahale (Patil),
Age : - 42 years, Occu. Nil,

2. Sojabai Baliram Mahale
Age : 70 years, Occ: Household

Both R/o: Biladi Diversion, Deopur,
Dhule, District Dhule.

**... APPLICANT
(Orig. Accused)**

VERSUS

1. Sau. Pushpa Mahesh Mahale
Age : 32 years, Occ: Agriculture,

2. Chetan Mahesh Mahale
Age : 12 years, Occ: Education,

The respondent no. 2 being minor
is through the respondent no.1 legal guardian

Both R/o: Plot no.107, Santosh Nagar,
Deopur, Dhule.

... RESPONDENTS

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Advocate for Applicants : Mr. Amit S. Savale

Advocate for Respondents: Mr. H.P Bondar h/f. Mr. N.L. Chaudhari

...

CORAM : MANGESH S. PATIL, J.

DATE : 05.09.2019

JUDGMENT :

. Heard. Rule. The Rule is made returnable forthwith. The learned advocate Mr. H.P. Bondar holding for advocate Mr. N.L. Chaudhari for the respondents waives service. At the request of both the sides, the matter is heard finally at the stage of admission.

2. The respondents are the wife and son of the applicant no.1. Applicant no.2 is his mother. The respondents filed an application under Section125 of the Code of Criminal Procedure against him in the Family Court at Dhule. By the impugned judgment and order dated 09.10.2018, the application was partly allowed and the applicant no.1 was directed to pay to the respondents maintenance at the rate of Rs.1,500/- per month each from the date of application i.e. 29.05.2014. Hence this revision.

3. The learned advocate for the applicants submits that there is absolutely no evidence to show that the applicant No.1 has refused or neglected to maintain the respondents. In fact, the respondents continue to stay in the same house where they were co-habiting with him even now and it is the respondent no.1 who has actually driven him out of the house. In fact, there was sufficient evidence to show

that the respondent no.1 was always unhappy to cohabit with him in the matrimonial home and had couple of times made an attempt to commit suicide to pressurize him. She was all the while insisting him to have a separate residence and it is only thereafter that the house was constructed and he started cohabiting with her in some portion of the house separate from his parents. He was also brutally assaulted by her relatives and he had to file a complaint about it. He was subjected to torture to such an extent that he went into depression and had to take treatment from a psychiatrist. Because of that he has been unable to do any work and has become totally dependent on the pension of his father. He would point out that since the applicant no.1 was suffering from mental condition and was unable to step into the witness box, he examined his psychiatrist as a witness and also examined the applicant no.2 who is his mother. No sufficient and cogent evidence was before the learned judge firstly to show that he had refused or neglected the respondents to maintain and secondly to show that he was earning sufficient enough to provide separate maintenance to them which in aggregate comes to Rs.3000/- per month. The impugned judgment and order is perverse and arbitrary and is liable to be quashed and set aside.

4. The learned advocate for the respondents submits that no fault can be found with the impugned judgment and order which is a

well reasoned order. No proceeding for restitution of conjugal right was ever initiated by the applicant no.1 to show his willingness to maintain the respondents rather he filed a proceeding for divorce and is conveniently taking a plea of mental condition. Similarly, under the pretext of such mental condition he has avoided to step into the witness box. In the absence of which, an adverse inference was available to be drawn against him and the learned Judge has rightly done so. No fault can be found in the learned Judge drawing such adverse inference not only while considering the aspect of refusal and neglect but also in drawing inference about his income and fixing the maintenance. The learned Judge has also not succumbed to the bald words of the respondents about his income. The respondents were asserting that he was earning in thousands and had claimed maintenance at the rate Rs.15,000/- and Rs.10,000/- per month respectively for the respondent nos.1 and 2 but still the learned Judge has taken a reasonable view by resorting to inevitable guess work and has fixed the quantum of maintenance which by no stretch of imagination can be said to be excessive.

5. I have carefully gone through the papers. The proceeding under Section 125 of the Code of Criminal Procedure being in the nature of a *quasi* civil proceeding the degree of proof required is not a strict proof but merely a preponderance of probabilities. Bearing in

mind this trite legal position if one examines the matter in hand, there is absolutely no sufficient and cogent reason to question legality of the impugned judgment and order.

6. Though the applicants examined one Dr. Salunke who is a psychiatrist to show that the applicant no.1 has some mental condition, as has been correctly noticed by the learned Judge, his deposition would only demonstrate that the applicant no.1 had several times consulted him and was suffering from depression. However, the Doctor still admitted that the applicant could lead a normal life if he takes proper treatment. In the absence of any other material to judge the degree of mental condition, the learned Judge was certainly justified in saying that because the applicant was suffering from depression, it could not have been said that he was mentally unsound and incapable of making out his defence. It is in the backdrop of such unassailable observation the conduct of the applicant no.1 in avoiding to enter into the witness box would constitute a vital circumstance to draw an adverse inference against him.

7. Independent of any other evidence, the circumstance that the applicant no.1 has not filed any proceeding for restitution of conjugal rights also speaks about his disinclination to maintain the respondents. Similarly, his conduct in filing a divorce petition also is

suggestive of the fact that for whatever reason he does not intend to cohabit with the respondent no.1. The fact of filing of such divorce proceeding has been specifically admitted by him in his say filed before the Family Court.

8. Conspicuously, the say has been filed under his own signature and it is note that the applicant no.2 who is his mother has filed it on his behalf. When he was capable of engaging an advocate and making out his own defence by filing his written statement under his own signature and also verifying it that would also demonstrate that he was intentionally avoiding to step into the witness box and has been correctly commented upon by the learned Judge as a subterfuge to say that he was suffering from mental disorder and was incapable of testifying.

9. For the same reasons, even the learned Judge was justified in drawing an adverse inference about his income. Primarily the burden was on the applicant no.1 to prove his income in view of the provisions of Section 106 of the Indian Evidence Act and he having failed to do so, by taking his income at the bare minimum, the learned Judge has fixed the quantum of maintenance at the rate of Rs.1,500/- per month for each of the respondents.

10. The learned advocate for the applicants vehemently

submitted that a party is not expected to discharge the burden only by stepping into the witness box and he can very well discharge such burden through the cross-examination of adversary. Indeed, there can not be any dispute as far as the manner in which a burden cast upon a party can be discharged. However, the learned advocate could not demonstrate even by referring to the cross-examination of the respondent no.1 as to how that would discharge the burden cast upon the applicant to prove his income. Therefore, the submission of the learned advocate would not enure to the benefit of the applicants.

11. The learned advocate for the applicant then submitted that the respondent no.1 has been casting in aspersions on the character of the applicant no.1 and her such conduct disentitles her from claiming any maintenance. He would point out that she and her brother who has been examined as a witness have specifically admitted that the applicant no.1 does not have any illicit relations. However, in my considered view, such isolated circumstance cannot be resorted to and is not sufficient to brush aside the other material on the record discussed herein above which is sufficient to draw a reasonable inference that the applicant no.1 has been without sufficient reason refusing and neglecting to maintain the respondents.

12. Thus considering all the aforementioned aspects I do not

find that the impugned order is perverse, arbitrary or capricious. Since the matter in hand is a revision the powers of the Revisional Court are limited and can be invoked only if it can be demonstrated that the order passed by the lower court falls under such category. The revision therefore is liable to be dismissed.

13. The revision is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)