

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 235 OF 2005

Shaikh Jaber Sk. Nazir,
age 32 years, Occupation Service
and Agriculture,
Resident of at present Sompuri,
Taluka Paithan,
District Aurangabad.

... Applicant

versus

1. Taslim Bano w/o Shaikh Jaber
age 25 years, Occupation Household,
Resident of c/o Panwadi,
c/o Hafiz Sk. Muzafar Nagar,
Raza Baugh, Aurangabad.

2. Shaikh Subur s/o Shaikh Jaber,
age 3 years, Minor u/g of
respondent no.1.

... Respondents.

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Mrs. A. N. Ansari, Advocate for the Applicant.

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CORAM : V. K. JADHAV, J.
DATED : 12th FEBRUARY, 2019

ORAL JUDGMENT :-

1. The applicant/husband has preferred this Criminal Revision Application against the judgment and order passed by the Family Court, Aurangabad in Petition No. E-56 of 2005 filed under Section 125 of the Criminal Procedure Code, 1973.

2. Brief facts of the case are as under:

a. The respondent-wife, along with her minor son, filed an application for maintenance under Section 125 of Cr.P.C. at the rate of Rs.1500/- each per month. The respondent-wife married with the applicant on 12.05.2000. She was treated well for the period of two years. She gave birth to respondent no.2. However, thereafter, she was subjected to ill-treatment on account of an unlawful demand of Rs.50,000/- from her parents to purchase a plot. Furthermore, on 05.09.2004 the applicant-husband got married with one Samina, resident of village Pal, taluka Phulambri. Though respondent-wife had filed Petition No. E-403 of 2004, however, the same was disposed of in terms of a compromise and she was taken for cohabitation. However, on 20.12.2004, she was assaulted mercilessly and driven out of the house. According to the respondent-wife, the applicant-husband is earning by way of salary of Rs.5000/- per month and from the agricultural land Rs.3,00,000/- per annum. No one is dependent upon him. The respondent-wife is unable to maintain herself and to maintain her son.

b. The applicant-husband has strongly resisted the said application by filing his say. He denied the alleged demand and ill-treatment. According to him, he is serving as a *Khadim* on a monthly payment of Rs.800/-. The respondent-wife herself is not ready to cohabit with him. She used to leave the matrimonial home without any substantial reason. the applicant-husband has also denied the second marriage. At the instance of her brothers, the respondent-wife has left the matrimonial home. She is able to maintain herself. She is doing tailoring work and earns Rs.1000/- per month.

c. Both the parties led their oral and documentary evidence in support of their rival contentions. Learned Judge of the family court has partly allowed the application and directed the applicant-husband to pay Rs.600/- per month to the respondent wife and Rs.300/- per month to the son towards their maintenance from the date of filing of the petition.

3. Learned counsel for the applicant-husband submits that the family court has not considered the grounds raised by the applicant-husband in its proper perspective. The respondent-wife is

residing with her parents without any just cause and as such, she is not entitled for separate maintenance. learned Judge of the family court has not considered that the applicant-husband is serving as a *Khadim* i.e. class-4 servant in a Madarsa on a meager salary of Rs.800/- per month. It is not possible for him to give separate maintenance to the respondents.

4. None present for the respondent-wife.

5. It is the case of the respondent-wife that she was being harassed for non-fulfillment of an unlawful demand of Rs.50,000/- for purchase of a plot. It is also an admitted fact that respondent-wife had lodged an FIR with Phulambri police station alleging the offence under Section 498-A of IPC. The respondent-wife was subjected to beating. She had called her brother and with his assistance, lodged the report with the Bidkin police station. Since then, she is staying with her parents. Even the applicant-husband has got married on 05.09.2004.

6. On careful perusal of the judgment and order passed by the family court, it appears that there is satisfactory evidence about the

ill-treatment being extended to the respondent-wife on account of non-fulfillment of certain demands. The applicant-husband has compelled the respondent-wife to leave the matrimonial house. Thus, the respondent-wife has just cause to live separate and demand maintenance since she was subjected to ill-treatment on account of non-fulfillment of unlawful demand of cash amount for purchasing a plot. I do not find any fault in the finding recorded by the family court that the applicant-husband has refused and neglected to maintain the respondent-wife and the son.

7. So far as the quantum of maintenance is concerned, the respondent-wife is a household *pardanashin* lady. She has no means of income. The applicant-husband is in the employment. He owns and possesses two acres of land as admitted by him in his cross-examination. Though he has deposed that he has five brothers and he has to maintain his old aged parents, however, in cross-examination he has admitted that one of his younger brothers is married. He has also admitted in his cross-examination that his parents are working in the agricultural field. However, the applicant-husband has not led any satisfactory evidence before the court to show the source of income of the respondent-wife. It thus

appears that the learned Judge of the family court, after considering the status of the parties and after giving due regard to the daily needs of the respondents, carved out a reasonable amount of maintenance i.e. at the rate of Rs.600/- per month to the wife and Rs.300/- per month to the son. I find no fault in the quantum of maintenance as carved out by the learned Judge of the family court. There is no substance in this Criminal Revision Application. Hence the following order:

ORDER

Criminal Revision Application No. 235 of 2005 is hereby dismissed and disposed of accordingly. Rule stands discharged.

(V. K. JADHAV, J.)