

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

CRIMINAL REVISION APPLICATION NO. 288 OF 2005

Sunil Bhavrao Deokar,
Age: 34 Years, Occu:Service,
R/o. Shikshak Colony, Somwar Peth,
house of Shewale Guruji Chandwad,
Dist. Nasik.

..APPLICANT

[Ori. non-applicant]

VERSUS

1. Sou. Pushpa Sunil Deokar,
Age: 28 years, Occu:Household,
R/o. C/o. Kashinath Shenphadu
Shejwalkar, Whejwalkar Nagar,
Chalisgaon, Dist. Jalgaon.

2. Ku. Prathamesh Sunil Deokar,
Age: 6 years, Occu : Nil,
R/o. As above minor,
Through his Guardian
Res.No.1

..RESPONDENTS

[Ori. Applicants]

...

Mr.A.N.Nagargoje, Advocate for the applicant

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CORAM: V.M.DESHPANDE, J.

DATE : 29.03.2019

ORAL JUDGMENT:

1] Heard Shri A.N.Nagargoje, learned
counsel for the applicant. The learned

counsel for the respondents chose not to remain present when this Revision Application was taken up for final hearing.

2] The present Revision Application arises out of the maintenance proceedings filed by the respondents under Section 125 of the Code of Criminal Procedure.

3] Admittedly, the applicant is the husband and respondent no.1 is the wife, and respondent no.2 is the son begotten from the marriage, which was performed on 16.07.1998, as per the pleadings in the Application filed on behalf of the respondents for maintenance. According to the application, on 09.05.1999, the present applicant assaulted to respondent no.1, and thereafter, she was deserted by the present applicant.

4] The proceedings were contested before the learned Judicial Magistrate First Class. The parties entered into the witness box in order to substantiate their pleadings, and the learned Judicial Magistrate First Class, Court No.2, Chalisgaon in Criminal Misc. Application No.20/2002 found that respondent no.1 is not entitled for maintenance since she failed to prove that she was deserted, however, granted maintenance in favour of respondent no.2 @ Rs.1,000/- per month. The judgment and order of the learned Magistrate is dated 07.07.2004. The judgment and order passed by the learned Magistrate resulted into filing of two different Revision Applications before the Revisional Court, one Criminal Revision Application No.208/2004 filed by the respondents for maintenance to respondent no.1 and another Criminal Revision

Application No.246/2004 by the present applicant, challenging the maintenance granted in favour of respondent no.2-son. The learned Revisional Court on 01.06.2005 dismissed the Criminal Revision Application No.246/2004 filed by the present applicant. The Criminal Revision Application No.208/2004 filed by the respondents was partly allowed and the Revisional Court found that even respondent no.1-wife is entitled for maintenance @ Rs.1,000/- per month from the date of application. This common judgment of the learned Revisional Court gave rise to two different proceedings before this Court, viz. the present Revision i.e. Criminal Revision Application No.288/2005, challenging judgment and order in Criminal Revision Application No.208/2004, and Writ Petition No.429 of 2005, challenging dismissal of the Revision filed by the present applicant. The Writ

Petition filed on behalf of the present applicant i.e. Writ Petition No.429 of 2005 stands withdrawn by the applicant and thus dismissal of the Criminal Revision Application No.246 of 2004 passed by the learned Revisional Court has attained its finality.

5] According to the learned counsel for the applicant, respondent no.1 is not entitled for any maintenance inasmuch as according to him, he has not deserted the wife and the wife on own left her matrimonial house without there being any sufficient cause. He submitted that Petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955, was also presented by the present applicant. It is also his submission that subsequently the applicant filed divorce proceedings against respondent no.1 and obtained a decree of

divorce, and therefore, on these submissions it is the case of the applicant that respondent no.1 is not entitled for maintenance.

6] At first blush, though the submission made by the learned counsel for the applicant appears to be attractive one, however, on closer scrutiny of the submissions and the facts submitted during course of argument by the learned counsel for the applicant himself, the aforesaid submissions for denying the maintenance to respondent no.1 is required to be turned down.

7] Though the application under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights was filed before the Competent Civil Court, even according to the learned counsel for the

applicant that the said application was kept in dormant condition for about 4 years, ultimately, the said application was required to be dismissed for want of prosecution by the Competent Civil Court.

8] If really the applicant was eager that respondent no.1 should join his company, he would not have remained silent and would have taken certain steps for prosecuting the said application before the Civil Court. Keeping the application for restitution of conjugal rights for 4 years in a dormant condition, which resulted into dismissal of the said application for want of prosecution and further not taking any steps for its restoration, in my view, is nothing but a facade on the part of the applicant to show that he was eager to join the company with respondent no.1. In that view of the matter, when the finding of fact was recorded by the

learned Revisional Court that it is the applicant, who has deserted respondent no.1, I see no reason to interfere with the said findings.

9] The learned counsel for the applicant would submit that he filed proceedings for divorce and obtained decree of divorce, and therefore, the relations between the applicant and respondent no.1 as husband and wife stand ceased. However, it is not the case of the applicant that after decree of divorce, respondent no.1 has re-married with anybody. Explanation b (2) subsection (1) of Section 125 of the Code of Criminal Procedure Code includes a divorcee as wife, in that view of the matter, though there was a divorce, till her re-marriage, she will be entitled to claim maintenance from the applicant.

10] During submission before this Court it is revealed that the applicant is a Government Servant and holding the post equivalent to the Section Officer. In that view of the matter, grant of maintenance @ Rs.1000/- per month, in my view is not excessive at all. Consequently, there is no merit in this Revision Application and the same is dismissed, however, no costs. Rule stands discharged.

[V.M.DESHPANDE]
JUDGE

DDC