

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.412 OF 2005

Anil s/o Charandas Bhalerao,
Age-21 years, Occu:Labour,
R/o-Kotwalpura, Aurangabad.

...APPLICANT

VERSUS

Deepmala w/o Anil Bhalerao,
Age-19 years, Occu:Household,
R/o-Gopinath Salvi, Itkheda,
Tq. & Dist-Aurangabad.

...RESPONDENT

...

None present for Applicant.

Mr.Kiran M. Nagarkar Advocate for Respondent.

...

CORAM: V.M. DESHPANDE, J.

DATE : 16TH APRIL, 2019

ORAL JUDGMENT :

1. By this Revision, the Applicant is challenging the Judgment and order passed by the learned Principal Judge, Family Court, Aurangabad,

on 26th October, 2005, in Petition No. E-221 of 2005, whereby the Court below granted the application filed on behalf of the Respondent/wife under Section 125 of the Code of Criminal Procedure and directed the Applicant to pay an amount of Rs.700/- per month towards the maintenance.

2. This Revision was admitted by this Court on 10th March, 2006 (CORAM: S.P. KUKDAY, J.). While admitting this Revision, stay was not granted in favour of the Applicant. Further, the statement of the learned counsel for the Applicant that the possibility of the compromise is in vogue, was also recorded.

3. Today, when this Revision was taken up for its final hearing, the Applicant and his counsel chose not to remain present before this Court.

4. The Respondent is represented by the learned counsel Shri K.M. Nagarkar. He supported the Judgment and order passed by the trial Court.

5. It is not in dispute that Applicant and Respondent's marriage was solemnized at Itkheda as per Hindu rites on 29th June, 2002. It is an admitted position that their marriage still subsists. The Respondent filed an application under Section 125 of the Code of Criminal Procedure for maintenance on 8th June, 2005, whereas the Applicant filed an application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, on 26th July, 2005. The application filed on behalf of the Respondent/wife was registered as Petition No.E-221 of 2005, whereas the application filed on behalf of the Applicant for restitution of conjugal rights was registered as Petition

No.A-229 of 2005. These two proceedings were decided by the common Judgment and order on 26th October, 2005. The learned Principal Judge of the Family Court dismissed the Petition filed on behalf of the Applicant/husband for restitution of conjugal rights, however, granted maintenance by allowing the application under Section 125 of the Code of Criminal Procedure, filed on behalf of the Respondent/wife.

6. There is nothing on record to show that against the dismissal of the Petition filed under Section 9 of the Hindu Marriage Act, the appeal was preferred before this Court by the husband. Thus the dismissal of the petition for restitution of conjugal rights has attended its finality.

7. According to the Applicant, in the Petition for restitution of conjugal rights as

well as in the written statement opposing the application for maintenance, it was pleaded that his wife was not permitting him to consummate the marriage. It was also pleaded that her parents obtained loan from him and on her own she has deserted the matrimonial house.

8. Converse is the pleadings made by the wife in her application for maintenance and written statement opposing the application for restitution of conjugal rights. It is the pleading of the wife that the husband demanded Rs.50,000/- for his business purpose and when her parents refused to accede to the demand, she was subjected to maltreatment, resulting her to leave the matrimonial house.

9. Both the parties entered into the witness box to prove their pleadings. Except their bare statements, no other evidence is adduced on

record.

10. In the traditional Hindu society, for nothing a married woman will not leave her matrimonial house. It is the case of the husband that an amount of Rs.20,000/- was given to his in-laws, but there is no evidence brought on record in that behalf. On the contrary, it is a specific case of the wife that she was subjected to cruelty on account of demand of Rs.50,000/- and that was the reason, she was required to leave her matrimonial house.

11. If the husband is creating such a situation wherein it becomes unbearable for wife to reside in a matrimonial house and if she is leaving the matrimonial house to save herself from the atrocities inflicted on her, in my view, it cannot be termed as desertion on the part of the wife. In that view of the matter, there is no

hesitation in my mind to record the finding of approval to the findings recorded by the Court below that, it is the Applicant who has deserted the wife.

12. It has come on record that the Applicant runs a bicycle shop and is having 30 to 35 bicycles. The Court below, after appreciating the evidence, has granted maintenance at the rate of Rs.700/- per month in favour of the wife, which in my view, is not on excessive side. There is no merit in the Revision. The Revision Application is dismissed. Rule discharged.

[V.M. DESHPANDE, J.]