

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

CRIMINAL REVISION APPLICATION NO.240 OF 2018

Satish s/o Suryakant Bacchewar,
Age: 31 years, Occu. Business,
R/o : Shramsaflia Nivas, Devulgalli,
Loha, Tq. Loha, Dist. Nanded.

... **APPLICANT**

Versus

Varsha w/o Satish Bacchewar,
Age: 26 years, Occu. Household,
R/o Devulgalli, Loha, Tq. Loha,
At present Shivajinagar, Nanded,
Tq. and Dist. Nanded.

... **RESPONDENT**

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Advocate for Applicant : Mr. Bhumkar R.P.
Advocate for Respondent : Mr. Yeramwar Sushant C.

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CORAM : MANGESH S. PATIL, J.
DATE : 11.09.2019

ORAL JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. Learned advocate Mr. Yeramwar waives service for the respondent. With the consent of both the sides the matter is heard finally at the stage of admission.

2. This is a revision by the husband being aggrieved and dissatisfied by the judgment and order passed by the learned Family Court Judge

awarding maintenance to the respondent-wife under Section 125 of the Cr.PC. @ Rs.5,000/- per month from the date of the petition.

3. The learned advocate for the petitioner submits that though the petitioner is educated and was in some employment, he had quit the job and was doing some small time business. Even it was closed subsequently because of the matrimonial dispute. Though it has come on record that his father has been receiving some pension and also earning some rent, there was no evidence before the learned Judge to conclusively determine his income. He had specifically stated that whatever business he was doing was shut down and he was not earning anything. Per contra, there was evidence before the learned Judge that the respondent was earning her livelihood and was capable of maintaining herself. In view of such state of affairs, when the respondent was refusing to co-habit with him on the ground of his alleged impotency, she was not entitled to claim any maintenance. There was also evidence to show that the respondent had on her own accord left his company and carried all the gold ornaments and cash. In view of such state of affairs, he was left with no other alternative but to file a divorce petition. His life has been completely devastated by all these happenings. Recently he suffered Rheumatic Heart disease and had to undergo a valve replacement surgery. Considering all these aspects, the quantum of maintenance arrived at by the learned Judge is

quite excessive and it may be reduced.

4. The learned advocate for the respondent-wife submits that the petitioner ought to have led evidence about his occupation and income. He is a qualified engineer. He was in a full time employment in Pune. He left that job and started some business at Loha. His father was examined as his witness no.2, who also admitted the fact that he had started the business at Loha. In spite of such evidence, he dodged the allegations and refused to divulge his exact income. Left with no other alternative but to draw some inference, the learned Judge has rightly fixed the quantum of maintenance @ Rs.5,000/- per month.

5. Besides, the petitioner simply alleged about respondent having left his company on her own accord by conveniently refusing to explain as to why he failed to compel her to resume co-habitation by filing any proceeding for restitution of conjugal rights. Rather he has preferred to file a petition for divorce. Therefore there was no question of her resuming co-habitation and there was apparent refusal or neglect on his part to maintain her. Thus taking in to account all these facts and evidence it cannot be said that the order passed by the Family Court Judge is either perverse or arbitrary so that it can be interfered with in this revision under Section 401 read with Section 397 of

the Cr.PC.

6. I have carefully perused the papers. As far as the alleged refusal or neglect and existence of sufficient cause for the respondent to stay separate and claim maintenance is concerned, obviously the parties have resorted to some blame game. Be that as it may, the fact remains that the petitioner has not filed any proceeding for restitution of conjugal rights against her and has preferred to file a divorce petition. There is also no evidence to show that since the couple has separated he has ever paid anything to her for her maintenance. If such is the state of affairs, one cannot but subscribe to the view expressed by the learned Family Court Judge that there has been sufficient material to show that the petitioner has refused and neglected to maintain the respondent.

7. As far as the quantum of maintenance is concerned, it has come on the record that the petitioner is a qualified engineer and was in some employment as a System Engineer in Pune. It has also come on record that he had quit that job and started his own business at Loha. Even his father who was examined as witness no.2 admitted the fact that he was doing some business. However conspicuously, the petitioner as well as his father have failed to divulge as to how much was he earning from such occupation /

business. Bearing in mind the provisions of Section 106 of the Indian Evidence Act, the fact of his income being within his exclusive knowledge, it was expected of him to have made some disclosure about it. However he has conveniently avoided to state the income and so has his father. In such peculiar state of evidence rather lack of it, the learned Family Court Judge was left with no other alternative but to resort to some guess work. Taking into account the educational qualification of the petitioner, coupled with the evidence regarding his having started some business which was going on even during pendency of the petition as was admitted by his father, the learned Judge has drawn a reasonable inference and has fixed the quantum @ Rs.5,000/- per month.

8. Thus taking in to account the entire material, the observations and the conclusions of the learned Judge of the Family Court by no stretch of imagination can be said to be either perverse, arbitrary or capricious, in the absence of which this Court cannot invoke in exercising the revisional jurisdiction.

9. Coming to the submission of the learned advocate for the petitioner that recently he has undergone some heart surgery, needless to state that if such is the state of affairs, all such supervening events can be brought

to the notice of the Court and he can very well exercise his right to seek revision of the quantum of maintenance depending upon such supervening circumstances. However no cognizance of such supervening circumstances can be taken at this juncture since it would be a pure question of fact to which the respondent may or may not agree.

10. Thus taking in to consideration all the aforementioned facts and circumstances, I find no sufficient and justifiable reason to cause any interference in the impugned order.

11. The revision is dismissed.

12. The rule is discharged.

[MANGESH S. PATIL, J.]