

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 196 OF 2018

Jayram s/o Nilkanth Sot,
Age 29 years, Occupation Service (Teacher),
R/o Takli (Bk) Tq. And Dist. Latur.
At Present Residing At Bazar Chowk,
Shivora Tumsar Dist. Bhandara.

**..Applicant.
(Orig.Respondent)**

VERSUS

Sow. Bhagyashree w/o Jayram Sot,
Age 24 years, Occupation Household,
R/o Takli (Bk.) Tq. And Dist. Latur.
C/o Balaji Kashinath Pandhare,
Gharola Road, At Present Residing
At Shrinagar, Vivekanand Chowk,
Latur Tq. And Dist. Latur.

**..Respondent.
(Orig.Petitioner)**

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Advocate for Applicant : Mr. V. B. Sargar.
Advocate for Respondent : Mr. N. D. Kendre.

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WITH

CRIMINAL REVISION APPLICATION NO. 197 OF 2018

Bhagyashree w/o Jayram Sot,
Age 23 years, Occupation Household,
R/o Takli (Bk.) Tq. And Dist. Latur.
At Present C/o Balaji Kashinath Pandhare,
Shri Nagar, Vivekanand Chowk, Latur
Latur Tq. And Dist. Latur.

..Applicant.

VERSUS

Jayram s/o Nilkanth Sot,
Age 28 years, Occupation Service,
R/o Takli (Bk) Tq. And Dist. Latur.

At Present Residing At Ronga Zilla,
Parishad School Tq. Tumsar
Dist. Bhandara.

..Respondent.

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Advocate for Applicant : Mr. N. D. Kendre.
Advocate for Respondent : Mr. V. B. Sargar.

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**WITH
CRIMINAL APPLICATION NO. 3754 OF 2019
IN CRI.REVN./196/2018**

Bhagyashree w/o Jayram Sot,
Age 23 years, Occupation Household,
R/o Takli (Bk.) Tq. And Dist. Latur.
At Present C/o Balaji Kashinath Pandhare,
Shri Nagar, Vivekanand Chowk, Latur
Latur Tq. And Dist. Latur.

..Applicant.

VERSUS

Jayram s/o Nilkanth Sot,
Age 28 years, Occupation Service,
R/o Takli (Bk) Tq. And Dist. Latur.
At Present Residing At Ronga Zilla,
Parishad School Tq. Tumsar
Dist. Bhandara.

..Respondent.

.....

Advocate for Applicant : Mr. N. D. Kendre.
Advocate for Respondent : Mr. V. B. Sargar.

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CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Judgment :
08-01-2020.**

**Date of Pronouncing The Judgment :
19-03-2020.**

JUDGMENT :

1. Both the revision applications are arising out of same Judgment and, therefore, they are proposed to be disposed of by this common Judgment.

2. Criminal Revision Application No.196 of 2018 has been filed by original respondent husband whereas Criminal Revision Application No.197 of 2018 has been filed by the original petitioner wife. Both are challenging the Judgment and order passed in Petition-E No.150 of 2017 by learned Judge of the Family Court, Latur on 08-05-2018, whereby the application filed by the wife for getting maintenance under Section 125 of Code of Criminal Procedure came to be partly allowed. Maintenance @ of Rs.9,000/- per month has been granted to the wife from the date of the petition. The husband has challenged it on the ground that it is excessive as well as on the point of entitlement of the wife to get maintenance ; whereas, the wife is seeking enhancement in the said amount of maintenance. Application No.3754 of 2019 has been filed by the wife for withdrawal of amount of Rs.51,000/- which has been deposited by the husband towards arrears of maintenance. (Hereinafter the parties are referred to as 'wife' and 'husband').

3. It is not in dispute that the wife and husband got married on 26-04-2012 as per Hindu rites at Chintamani Ganesh Mandir Shrinagar, Latur. Their status is still subsisting. They have no issue out of the wedlock. It is further an admitted position that the husband is serving as a teacher in Zilla Parishad School at Shivora Tq. Tumsar Dist. Bhandara. Further it is not in dispute that, after the marriage the wife went to reside at the place of the service of the husband on 06-05-2012.

4. With these admitted position the wife had come with a case that, her parents had given dowry of Rs.2,50,000/-, five tola gold to her, one gold locket and two gold rings to husband and had incurred the expenditure of the marriage. She contends that, she was treated properly by the husband for about two years. Thereafter in June 2014 he had forcibly made her to consume liquor and, thereafter, by confining her in bathroom, he had tried to kill her. He was asking the wife to bring Rs.5 lakh for purchasing house at Shivora. He used to insult her and assault her under the influence of liquor in order to get the fulfillment of his demand. Wife used to tell him that, her father's financial position is poor and, therefore, he cannot fulfill his demand. So also now her father is incurring huge

expenditure on hospitalization of the mother. Even when the husband used to bring wife to Takli Tq. Dist. Latur where his parents were residing at the time of summary and Diwali vacation, at that time also he used to assault her in presence of all under the influence of liquor. The relatives of the husband used to instigate the husband. They were not giving her proper food to eat and all of them used to say that, unless she brings amount, she should not be allowed to cohabit. They were also ill-treating her on the count that she was not able to begot a child. She was sustaining the harassment in hope of good days. Husband, thereafter, became suspicious and started saying that, since she is unable to begot any child, he want to perform second marriage. He also told that, he has kept illicit relations with a lady and, therefore, he is not in need of the wife. The wife used to tell all these facts to the relatives of the husband, however they were not supporting her, rather they were supporting the husband. Wife came to her parental house when her mother became ill, and even at that time in presence of her relatives, the husband had misbehaved under the influence of liquor. The mother of the wife expired in September 2016 due to cancer. When husband had gone to her parental house, he picked up quarrel on the third day. All the relatives had pacified him that in such

situation he should not pick up quarrels. However, on the tenth day the husband and one Shahaji Tulshiram Shendage came in drunken condition, and made chaos at her parental house, and demanded amount of Rs.5 lakh immediately. After all the rites were over, when wife went to cohabit in October 2016, accompanied by her father and relatives, the husband told that he is not in need of the wife and, therefore, he will not allow her to cohabit. However, he put a condition that, if amount is given then he may allow. Thereafter, there were efforts to settle the dispute, however the husband used to give phone calls from mobile and abuse the wife in filthy language. Again on 20-06-2017 the husband who had come along with his parents, brother, sister, sister's husband had picked up quarrels, assaulted her and made demand of money. She had then lodged complaint application with Mahila Takrar Nivaran Kendra, Latur however no action was taken. The husband has not made any arrangement for her maintenance. He is getting salary of Rs.45,000/- per month. His father has two pieces of lands and his grandfather has irrigated land at Takali. The agriculture income of the husband is around Rs.3 lakh per year and, therefore, she prayed for maintenance @ of Rs.20,000/- per month.

5. The husband resisted the application and denied all the allegations which were attributing to him. It was denied that, such huge expenditure was made, dowry given, and also the gold was given at the time of marriage. It is stated that, the seven tolas of gold is given by him and not by her parents. Entire household articles have been purchased by him out of his own income. It is denied that, after 06-05-2012 she started residing with husband at Shivora and he had tried to kill her in June 2014, demanded amount of Rs.5 lakh for purchasing house at Shivora. It is also denied that, he had assaulted her under the influence of liquor. It is also denied that, his relatives as well as he himself had insulted the wife for not giving birth to any child and harassing on that count also. It is denied that, he had expressed his intention to marry second time on the count that the wife is not giving birth to any child. The alleged incident at the house of her parents, either prior to the death of her mother or after the mother's death, have been denied specifically. It is also denied that, in October 2016 he had refused to allow applicant to cohabit with him and demanded amount of Rs.5 lakh. It is also denied that, he had abused the applicant on mobile and, thereafter, any incident had taken place on 20-06-2017. It is denied that, he is getting salary of Rs.45,000/- and his family is having

agricultural land, giving him income of Rs.3 lakh per year. The husband contends that, he is serving as 'Shikshan Sevak' and getting salary of Rs.34,000/- per month. He has nothing to do with the income derived from the lands. It is stated that, since beginning the wife was reluctant to cohabit with him. She was not doing any household work. She was not talking properly with him, however he adjusted himself on the ground that since she is newly married, she may require time. She used to frequently visit her parents house. They had taken a room on rent at Shivora. Gradually she started picking up quarrels with him on one or the other pretext. She used to sit whole day without doing any work, not even prepare food and used to talk on mobile for hours together. She was speaking arrogantly with him. After some times it was realized by him that the applicant is talking frequently with one Padmakar Jadhav who was residing in their neighbourhood. They used to talk on mobile and used to exchange messages. When he asked the applicant about the same, she admitted that there is love affair between her and Padmakar Jadhav. The husband had tried to give advise to her, however there was no change in her behaviour, and she had given threat to him as well as his relatives that they would be implicated in cases. He had tried to advise her and settle the dispute, however

the wife picked up quarrel with him on 28-05-2016 and by expressing it in clear language that she does not want to cohabit with him, left his house voluntarily with all the gold ornaments. Thereafter, he had made efforts to take her back but in vain. He has raised loan of Rs.8 lakh from Shikshak Society for construction of house. The monthly installment for repayment is Rs.18,000/-. He is also required to pay Rs.3,200/- as installment of Life Insurance Corporation. He is getting only Rs.12,800/- in hand. He is required to spend Rs.2200/- towards rent, Rs.500/- towards light bill per month. Further, since the applicant has gone, he has made arrangement for his food and is required to pay Rs.3,000/- for his mess. Further amount of Rs.1,500/- is incurred for the household activities. He also required to send money to his old age parents. By spending all these amount, only amount of Rs.2,600/- remained in his hand, therefore he is unable to pay maintenance. He, therefore, prayed for rejection of the application.

6. Both the parties have led oral as well as documentary evidence. After considering his evidence on record, the learned Judge of the Family Court has partly allowed the application. It was held that, the husband has refused and neglected to maintain the

wife. The wife is unable to maintain herself. Husband has sufficient means of income and, therefore, maintenance has been granted @ of Rs.9,000/- per month from the date of the application. Hence, these revision applications challenging the quantum as well as the entitlement as aforesaid.

7. Heard learned advocate Mr. V. B. Sargare appearing on behalf of husband and learned advocate Mr. N. D. Kendre appearing on behalf of wife.

8. It has been vehemently submitted on behalf of the husband that, the learned Trial Judge has not appreciated the evidence properly. The learned Judge has not appreciated the evidence adduced by the husband which was in support of his written say. The admissions given by the wife in her cross-examination have not been considered properly. Unnecessary insistence has been given on the contents of the say that, husband was picking up suspicion over the character of the wife. Further, when entire account of the income of the husband has been given by him, as to how the income is derived and how it is spent, only amount of Rs.2,600/- remains in the hand of the husband, and still maintenance has been granted @ of Rs.9,000/- per month. It is very much exorbitant and it is

requested to be reduced.

9. Per contra, the learned advocate appearing for the wife submitted that, in the say itself the husband has made allegations on the character of the wife. It has been rightly observed by the learned Judge of the Family Court that, existence of such person itself is made doubtful. Exactly at which place that Padmakar Jadhav uses to reside has not come on record, and if such person was in existence, then the reaction and conduct of the husband would have been different. He has not examined any of his relative to support his contention. Further, the learned Judge of the Family Court has rightly considered that, though the account of the expenditure of the income has been given by the husband orally, there is no supporting documents produced by him. When the best possible evidence could have been only by means of documents, the oral evidence cannot be believed at all. However, the learned Judge of the Family Court failed to consider that the husband is getting around Rs.35,000/- per month, and even if we consider some compulsory deductions, yet maintenance awarded @ of Rs.9,000/- per month is very much meager and it should be in consonance with the comfort with which the husband is stating, therefore that

amount needs to be enhanced.

10. At the outset it is to be noted that, except the husband and wife, they have examined the father of the wife and brother of the husband to support their respective contentions. The wife has reiterated the contents of her application in her examination-in-chief and most suggestions have been denied by her in her cross-examination. As regards behaviour of the husband with her when they both were residing at Shivora is concerned, nobody else has been examined and, therefore, it is required to be seen as to whose evidence is trustworthy or believable. The wife is coming with the specific case that, there was no dispute for about two years after the marriage but trouble started thereafter. The husband assaulting her, abusing her under the influence of liquor would be definitely within her knowledge, but as regards the said behaviour of the husband under the influence of liquor at the place of her father's house is then supported by her father. It has been stated by them that the relatives as well as the father had taken the wife for cohabitation after all the rites were over in October 2016, but the husband had not allowed the wife to cohabit with him. There is nothing to disbelieve this fact. We find support in the allegation of

the wife that the husband used to pick up suspicion over her character, when in the say as well as evidence, the husband states that the wife had developed the love relations with one Padmakar Jadhav. Existence of such person has not been proved by the husband and any evidence supporting that contention has not been adduced. The immediate action of the husband would have been to call a meeting of the parents of the wife and other relatives with his relatives. It is further an admitted position that, even after four years of marriage, when the wife has not begotten any child, the possibility cannot be ruled out that, she would have been harassed on that count when she has specifically made that statement and it is then supported by her father. Therefore, all these facts would show that, there is reasonable ground for the wife to reside separately from the husband as he is not allowing her to cohabit with him.

11. The husband has not stated that, in any way he has made arrangements for the maintenance of the wife. When according to him the wife had voluntarily left the house, the natural course for him would have been to call meeting which he alleges that he had called but, thereafter, he could have resorted to issuing notice to the

wife and asked her to resume the cohabitation, filing of the petition of restitution of conjugal rights, but no such action has been taken by the husband. He has not given any reason as to why he has not taken this kind of action also. Therefore, it will have to be concluded that he has refused and neglected to maintain wife.

12. Though it has been stated by the husband that, the wife earns by doing business of putting Mehendi on hand and tailoring, yet no evidence is adduced. The wife is therefore unable to maintain herself. Husband is serving as teacher and getting income around Rs.35,000/- per month, therefore he has means to maintain the wife.

13. The husband has come with a case that, the deductions which are required to be made, and the expenditure which he is required to incur, are to the tune of Rs.30,000/- and odd and thereby remains only Rs.2600/- per month in his hand. However, he has not adduced any evidence to show that, he has obtained loan of Rs.8 lakh and the installment towards the house loan is Rs.18,000/- per month. He has not taken pains to produce his salary slip before the Trial Court. The wife has produced salary slips of November and December 2017, and it has not been pointed out that, in those

documents the deduction is shown. Even if for the sake of arguments we accept that such installment is required to be paid, yet it has not come on record as to when that loan was taken and for how much period henceforth he is required to pay the installments. It cannot be a permanent deduction which is then required to be considered. Therefore, it has been rightly observed by the learned Judge of the Family Court that, it appears to be exaggerated amount to show that he is receiving less amount in hand. The other expenditure which he is incurring on rent, light bill etc. though considered, there is sufficient amount with him. Further, we cannot forget that he has share in the agricultural land. It has come on record that, the servant who has been employed on the agricultural land is getting Rs.65,000/- to Rs.70,000/- per annum. Therefore, when the servant is getting this much amount, definitely the family is getting a good amount in which definitely the husband has share. That amount will have to be considered when we are considering the income. Taking into consideration all these aspects, this Court comes to the conclusion that, the amount of maintenance granted @ of Rs.9,000/- per month is perfectly justifiable amount. The wife is not entitled to get any enhancement as we cannot forget some of the deductions those are required to be made and the

expenditure which the husband would have been incurring. Taking into consideration the status of the husband and the income he is getting, there is no necessity to reduce the said amount of maintenance granted by the Trial Judge.

14. Taking into consideration the above reasons, there is no merit in both the revision applications and, therefore, they deserves to be dismissed.

15. The application for withdrawal of the amount deposited by the husband towards arrears of maintenance deserves to be allowed. Hence, following order.

ORDER

- 1) Both the revision applications are dismissed.
- 2) Application No.3754 of 2019 stands allowed. The applicant therein i.e. wife is allowed to withdraw the amount of Rs.51000/- which have been deposited by the husband.

**(SMT. VIBHA KANKANWADI)
JUDGE**

vjg/-