

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4367 OF 2019**

Khudbuddin Maqbul Shaik

.... Petitioner.

V/s

Shalmat Khudbuddin Shaikh

and Anr.

.... Respondents.

Mr. Nikhil Wadikar i/b Nandu Pawar for the Petitioner.

Ms. Sonal Rajput for Respondent No.1.

Mr. R.M. Pethe, APP for the State.

CORAM: NITIN W. SAMBRE, J.

DATE: JANUARY 08, 2020

P.C.:-

1] This Petition is by husband questioning the order of award of maintenance by learned Sessions Judge in exercise of revisional jurisdiction.

2] The Respondent-wife initiated proceedings under Section 125 of the Code of Criminal Procedure claiming maintenance alleging that parties to the Petition were married on 30/4/1989 as per Muslim Customs and Rituals. A daughter was born on 1/1/1993, who claimed to have been married. It is claimed that the Petitioner-husband who is

working as a driver is earning salary of Rs 16,000/- and owns two and half acres irrigated land. Based on above, it is claimed that monthly maintenance of Rs 8,000/- be paid to the Respondent-wife.

3] The defence of the present Petitioner-husband was that the Respondent-wife resided with him up to July, 2007. The Respondent-wife was in a habit of repeatedly leaving matrimonial home and visiting parental home. It is alleged that a false complaint was filed in the Police Station and also before Women Redressal Committee.

4] It is further claimed that on 24/5/2010, Petitioner performed marriage of his daughter and in the month of April 2012, Respondent-wife again left matrimonial home and went to parental house. Respondent-wife was brought back for cohabitation by the Petitioner. She again went back on the eve of Bhaubij in Diwali festival of 2013. Relatives of the Petitioner tried to bring her back on 16/11/2013 which was followed with notice on 19/12/2013.

5] Repeated attempts on the part of the Petitioner-husband to bring back Respondent for cohabitation were not honoured by her, including that in proceedings for restitution of conjugal rights. As such, it is

claimed that wife herself has withdrawn from the company of Petitioner-husband.

6] The learned Trial Court rejected prayer for grant of maintenance having noticed that Respondent-wife has withdrew herself from the company of the Petitioner, whereas the revisional court awarded maintenance of Rs 3,000/- per month with effect from 30/1/2014 with the costs of litigation of Rs 5,000/-.

7] While inviting attention of this Court to the evidence of respective witnesses i.e. father of Respondent, Respondent-wife and the Petitioner and his brother, learned Counsel for the Petitioner submits that there is enough evidence available on record to infer that Respondent-wife has withdrawn herself from the company of the Petitioner-husband.

8] By relying on the the provisions of Section 125 sub-section (4) of the Code of Criminal Procedure submissions are, in case if wife refused to cohabit with husband or wife has withdrawn herself from the company of husband she is not entitled for maintenance.

9] Per contra, claim of Respondent-wife is that award of maintenance by revisional court is based on re-appreciation of evidence. The evidence in categorical terms speaks of negligence on the part of the Petitioner to maintain the wife and that being so, award of maintenance is very much justified.

10] Considered submissions.

11] The Respondent-wife has examined herself at Exhibit-20 and her father Abulal Bapu Shaikh at Exhibit 31. She has produced on record 7x12 extracts of the land owned by the Petitioner-husband at Exhibits-52 to 55, notice dated 9/1/2014 issued to the Petitioner-husband at Exhibit-51.

12] Petitioner examined himself at Exhibit-35, his brother Shabbir Makbul Sahikh at Exhibit-45 and notices issued by him to Respondent-wife at Exhibits-38 and 41. He has also produced on record certified copy of judgment in RCS No. 27 of 2014 initiated by him for restitution of conjugal rights.

13] Though notice at Exhibit-38 shows that the Respondent-wife left matrimonial home of the Petitioner-husband, she refused to accept the said notice-Exhibit-38. Another notice-Exhibit-41 dated 19/12/2013 was sent to her. However she denies receipt of the same. In cross-examination, she has denied initiation of complaint before Women Redressal Committee and settlement of the said complaint. However, record speaks otherwise. Initiation of such complaint has been admitted by her father who was examined as a witness. Though Respondent-wife has denied performance of marriage of Ayesha, her daughter by the Petitioner, the said fact is admitted by her father Abulal (A.W. No.2) Respondent-wife has also denied initiation of proceedings for restitution of conjugal rights being RCS No.27 of 2014, which fact has been duly admitted by her father. As such, upon scrutiny of overall evidence, including cross-examination of Respondent-wife, it could be inferred that Respondent-wife has tried to base her case on narration of incorrect (false) evidence. Her evidence goes totally contrary to one that has been deposed by her father in cross-examination. Rather, from the evidence of the Petitioner and his witnesses so also of A.W.2 witness of Respondent-

wife, it could be inferred that Respondent-wife withdrew herself from the company of the Petitioner.

14] Revisional Court while appreciating evidence has, for unwarranted reasons, interpreted the same in favour of Respondent-wife. Admissions given by A.W.2, father of Respondent-wife are duly ignored and in excess of revisional jurisdiction, the Court has proceeded to award maintenance, which, in my opinion, is not justifiable. The revisional court appears to have been oblivious to the admissions given by A.W.2, the witness of Respondent-wife in favour of the Petitioner and the inference that could be drawn of withdrawal by Respondent-wife from the company of the Petitioner. As such, in the wake of above and having regard to the provisions of Section 125 sub-section (4) of the Code of Criminal Procedure, this court is not hesitant in setting aside the order impugned passed by the revisional court awarding maintenance in favour of the Respondent-wife. It appears that revisional court also exceeded its jurisdiction while re-appreciating the evidence that too beyond permissible limit.

15] In the result, the order impugned passed by the revisional court

awarding maintenance of Rs 3,000/- on 30/5/2019 is quashed and set aside.

16] Petition stands allowed in the aforesaid terms.

(NITIN W. SAMBRE, J.)