

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

919 CRIMINAL REVISION APPLICATION NO. 145 OF 2018

Anil S/o. Machindra Waghmare, **...APPLICANT**
Age-36 years, Occu-Nil,
R/o. House No.A 57/30, Kolhe Nagar,
Latur, Tq. & Dist. Latur

VERSUS

Bhagyashree W/o. Ahnil Waghmare, **...RESPONDENT**
Age-32 years, Occu-Hosehold,
R/o. C/o. Maruti Ramrao Suryawanshi,
Vikas Nagar, Latur, Dist. Latur

Mr. N. D. Kendre, Advocate for the applicant
Mr. Manoj Shinde, Advocate for the respondent

CORAM : SURENDRA P. TAVADE, J.

RESERVED ON : 20-08-2021

PRONOUNCED ON : 08-10-2021

P. C.

1. The applicant is challenging the judgment and order dated 10-04-2018 passed by the Family Court, Latur in Petition No.E-67 of 2017 (Old Cri. M.A. No. 183 of 2015), whereby the family court directed the applicant to pay the maintenance of Rs. 35,000/- per month to the respondent from the date of application.

2. It is contended that the respondent had file the application bearing petition No. E-67 of 2017 (Old Cri. M.A. No.

183) for monthly maintenance under Section 125 of the Code of Criminal Procedure. It was alleged that the applicant deserted the respondent and since then the respondent has been residing at her parental house at Latur. It is alleged by the respondent that she has no independent source of income for livelihood. It is alleged that the applicant is an Engineer and his financial position is sound. It is alleged by the respondent that the applicant was earning salary of Rs. 60,000/-. He is having private company and earns huge amount from the said company. It is alleged by the respondent that the applicant has illicit relation with Sheetal Ubale even after the marriage. It is alleged that the applicant demanded Rs. 10,00,000/- from the respondent and her parents. The said demand was not fulfilled. Therefore, the respondent was harassed and ill-treated by the applicant.

3. It is contended that the applicant has denied the allegations made by the respondent in her application. It is contended that Sheetal and Shalini are cousin sisters of the applicant namely daughters of maternal aunt. It is denied that the applicant never ill-treated the respondent. He never demanded Rs. 10,00,000/- either from the respondent or her parents. It is denied that the financial condition of the applicant is sound. It is denied that the applicant is having private company and earns huge amount. It is contended that due to litigation filed by the respondent, the applicant lost his job. Now, the applicant is working in one firm and earns Rs. 15,000/- per month. It is contended that

the trial court has not considered the defense of the applicant and passed the improper and wrong order. It is contended that the trial court has not considered the evidence laid by the applicant properly. The trial court has swayed away with the submission of the applicant and passed the exorbitant order of maintenance. It is contended that the trial court has not appreciated the evidence of applicant regarding settlement of matrimonial dispute. It is contended that the respondent quarreled with the applicant and then left the matrimonial house on her own accord, therefore, she is not entitled for any maintenance. But, the said fact is not considered by the trial court. The applicant prays that the order of the trial court be set aside.

4. Learned counsel for the respondent submits that the applicant had admitted his illicit relation with Sheetal in the proceeding before the Family Court, Pune. He also submits that there are several letters written by the applicant to Sheetal. He also contended that the applicant is in habit of writing diary. The respondent has produced on record two diaries of the applicant wherein he has expressed his love and affection towards Sheetal. The respondent has also produced on record the call details of his cell phone to establish the illicit relation of the applicant with the Sheetal. It is contended that the respondent was ready and willing to cohabit with the applicant. But, the applicant has not shown any interest to cohabit with the respondent. It is contended that the applicant instead of filing of restitution of conjugal rights, he filed

the divorce petition, whereby, it is clear that the applicant had not intention to cohabit with the respondent. It is alleged that the respondent had taken steps for settlement of dispute. But, the applicant has not shown any interest. It is contended that the applicant was serving in company at Ambarnath and was earning Rs.60,000/-. He left the job and started his company wherein he is Director. The respondent has produced on record the documents regarding the company run by the applicant. The applicant is having sufficient means to maintain the respondent. But, he failed to maintain the respondent. Therefore, the family court has rightly allowed the application. The trial court has appreciated the evidence laid by the parties. Therefore, there is no need to interfere with the impugned order passed by the family court.

5. Heard learned counsel for the applicant and learned counsel for the respondent.

6. Perused the evidence led by the parties. Perused the impugned order.

7. It is not in dispute that the applicant and respondent married on 05-02-2012. After the marriage, they were residing at Ambarnath for 6-7 months. It is also admitted fact that the applicant is an Engineer by profession.

8. The respondent has filed her evidence affidavit. She was

cross-examined on behalf of the applicant. She has produced on record following number of documents:

- a. Two diaries in the handwriting of the applicant Articles A & B.
- b. Certified copies of financial statement of Cent Pro Engineering Pvt. Ltd., alongwith Directors report, Form AOC-4, Form MGT-7, list of share holders at Exh. 70 to 76.
- c. Certified copy of total proceeding happened in pursuance of her complaint to Women Grievance Redressal Centre at S. P. Office at Latur at Exh. 23.
- d. Certified copy of Petition A 1254/2013 filed by the applicant against her in Family Court at Pune at Exh.24.
- e. Certified copy of application for withdrawal of above petition.
- f. Certified copy of application for interim maintenance in the said petition dated 07-05-2014 alongwith order thereon dated 04-08-2014 at Exh. 27.
- g. Certified copy of evidence in said petition No. 1254/2013 at Exh. 28.
- h. Admission card of Sheetal Ubale for June 2012 for appearing examination of Company Secretary at Exh. 54.
- i. Certified copy of letter of Sheetal to the applicant which was exhibited in petition No. A 1254/2013 before the Family Court at Exh.41.
- j. Letter of Sheetal to the applicant at Exh.47.

- k. Call details of applicant's mobile Sim Number 9890540627 for the period March, 2013 to July, 2013 at Exh. 57.
- l. Copy of payment voucher to the applicant from Deepesh Engineering Works at Exh.89/1 to 89/3.

9. The applicant had filed his affidavit of evidence. He examined Javed Shaikh to prove his efforts to settle the dispute. The applicants had also produced the following documents.

- a. Copy of the reply from the respondent to his notice dated 09-10-2013 at Exh. 101.
- b. Intimation letter from Satish Lagad, Director of Cent Pro Engineering Pvt. Ltd. Co. to the applicant dated 28-10-2013 at Exh. 102.
- c. Resignation letter of applicant dated 11-11-2013 to Cent Pro Engineering Pvt. Ltd. Co. at Exh. 103.
- d. Copy of evidence of Rajkumar Mane, who deposed in petition No. 1254/2013 at Exh.104.

10. It is the basic case of the respondent that after the marriage she started residing with the applicant at Ambarnath. The applicant was provided residential quarter by his employer at Ambarnath. It is also deposed by the respondent that after marriage, she had been Shimla, Kulumanali alongwith the applicant. The applicant used to receive frequent calls from Sheetal. When she came to the Ambarnath she found two diaries maintained

by the applicant in his owned handwriting wherein he had expressed his love and affection towards Sheetal and Shalini. The said Sheetal and Shalini are siblings. The respondent has explained that said Sheetal and Shalini are daughters of his maternal aunt. The respondent has also deposed that the applicant had admitted in the cross-examination recorded in the petition No. 1254/2013 his love affair with Sheetal. On this point, learned counsel for the respondent submits that this court should peruse the call details of cell phone of the applicant. The contents of diaries and call details are not denied by the applicant.

11. The contents of diaries show that the applicant used to talk to Sheetal and Shalini frequently. He has expressed his love and affection towards them. On perusal of the call details of Sim No.9890540627 it appears that from April, 2013 to July, 2013 the applicant had called Shalini for several times and duration of calls were very long. It appears from the call details that on 17-04-2013, the applicant had sent 39 messages, on 18-04-2013 42 messages, on 20-04-2013 27 messages, on 22-04-2013 41 messages sent to Shalini. On 06-06-2013 he had sent 74 messages to her. I already observed that the applicant has not denied call details and the messages sent by him to the Shalini. Therefore, it appears that the applicant and Shalini had intimate relationship. The applicant tried to explain to the respondent that Shalini was his cousin. But, if the diaries and calls details are perused, it can be said that the respondent had formed her opinion that the applicant had relation

with Shalini. It appears that they used to quarrel between the applicant and respondent over the contents of diaries. It was expected from the applicant to explain his relation with Shalini and Sheetal to the respondent. But, it appears that instead clearing doubt in the mind of the respondent, he left the respondent to her parental house. The applicant and the respondent resided together for hardly 6-7 months. It also appears that the applicant had issued notice to the respondent. Thereafter, meeting was held in parental house of the respondent. But, settlement could not be arrived at. In fact, the relation became more strained between the parties.

12. Learned counsel for the applicant submits that the respondent had taken doubt over the character of the applicant and left the matrimonial house on her own accord. But, the evidence is otherwise that the respondent was sent to her parental house. No steps were taken by the applicant to reconcile the relation with the respondent. No doubt, the applicant has examined Javed Shaikh to establish that he has taken steps for settlement of dispute and to show that the respondent was adamant. The applicant has also examined Rajkumar Mane in his petition bearing No. 1254/2013. After his cross-examination the applicant withdrew the said petition on the ground that he is unable to proceed with the matter due to poor financial condition. He was allowed to withdraw the petition. But, he gave number of admissions in his cross-examination in the said petition. Call details were also produced in the said petition by the respondent. Thereafter, the respondent filed application for

maintenance.

13. One has to see, whether the respondent has sufficient ground to leave the matrimonial house. She has categorically deposed that she was harassed by the applicant. She has produced on record diaries and call details which prima-facie shows that the applicant had intimate relation with Shalini which he has not explained at all. Therefore, it can be said that the respondent had sufficient ground to reside separately from the applicant.

14. It is also alleged and proved by the respondent that the applicant was demanding money from her. She also alleged that she was assaulted and driven out of the house on 26-08-2013.

15. On the other hand, it is the case of the applicant that on 26-08-2013, the respondent left the matrimonial house on her own accord. The marriage between the parties was performed on 05-02-2012. Relation between the applicant and respondent became strained within a year of marriage. There are allegations against each other. But, it appears from the evidence of respondent that due to illicit relation between applicant and Shalini, she was mentally stress. She also alleged that the applicant and her family members were trying to set her on fire as she failed to comply with their demands of money. The applicant has not given plausible explanation for the departure of respondent from matrimonial house. It is expected from husband to explain why wife has left the

matrimonial house. But, in the present case the applicant has not given any reasonable cause as to why the respondent left the matrimonial house. On the contrary, the respondent has produced on record the diaries and call details of the applicant which shows that he had intimate relationship with Shalini that itself is a ground for respondent to stay away from the matrimonial house. Therefore, it cannot be said that the respondent left the matrimonial house on her own accord.

16. It is the case of the respondent that she is unable to maintain herself. It is also the case that the applicant has sufficient means to maintain himself and the respondent. On this point, the respondent has produced on record number of documents in the trial court which shows that the applicant was serving at Ambarnath and he was earning Rs. 60,000/- per month. Said fact was not denied by the applicant. The respondent has also produced on record the financial statement of Cent Pro Engineering Pvt. Ltd. alongwith Director's report, Form AOC-4, Form MGT-7, list of share holders at Exh. 70 to 76. On perusal of the said documents, it appears that the applicant is Director of Cent Pro Engineering Pvt. Ltd. The respondent has also produced on record the latest status of Cent Pro Engineering Pvt. Ltd. as on 12-04-2021 wherein the applicant is shown as Director. Therefore, it is established that the applicant is still Director of said company alongwith Sachin Lagad. The respondent has also produced on record the statement of profit and loss account of Cent Pro Engineering Pvt. Ltd. for the year

ended on 31-03-2019 wherein, it is shown that the applicant was holding 33% shares in the said company. The documents of financial profit and loss produced on record by the respondent for the year ended on 31-03-2019. It appears that the company was in profit and the applicant received his share.

17. It is admitted fact that the applicant is Mechanical Engineer. He was serving in Deepesh Engineering Works at the time of marriage and earning Rs. 65,000/-. The said fact was not denied by the applicant. It is the case of the applicant that he resigned as a Director of Cent Pro Engineering Pvt. Ltd. He produced on record letter dated 11-11-2013 addressed to Satish Lagar (Exh.103). But, there is no documents on record to show that the resignation letter of applicant was accepted by the Board of Directors. In fact, I have already observed that the respondent has produced on record the latest position of Cent Pro Engineering Pvt. Ltd. as on 12-04-2021, wherein the applicant is shown as Director of company since 17-08-2012. Therefore, it can be said that the applicant has failed to establish that he is not Director of the company. On going through the documents on record, it can be said that the applicant has sufficient means to maintain his livelihood and maintain respondent.

18. It is vehemently submitted on behalf of the applicant that he is serving in the private company and earns Rs. 15,000/-. But, no document is produced on record to establish that the

applicant is working in private company. Therefore, it was expected from the applicant himself to produce the profit and loss account of said company. But, no efforts are taken by the applicant to produce the financial documents of said company.

19. Learned counsel for the applicant submits that income of the respondent is to be considered for determining the quantum of maintenance. To substantiate his point he relied on the ratio laid down in the case of Shri Bhagwan Dutt Vs Smt. Kamla Devi and another reported in (1975) 2 SCC 386, wherein the Apex Court observed as under:

19. The object of these provisions being to prevent vagrancy and destitution, the Magistrate has to find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with status of the family. The needs and requirements of the wife for such moderate living can be fairly determined, only if her separate income, also, is taken into account together with the earnings of the husband and his commitments.

20. Learned counsel for the applicant has also relied on the ratio laid down in the case of Chaturbhuj Vs Sita Bai reported in (2008) 2 SCC 316 the Apex court in para No. 7 and 8 observed as under:

7. Under the law the burden is placed in the first place upon

the wife to show that the means of her husband are sufficient. In the instant case there is no dispute that the appellant has the requisite means. But there is an inseparable condition which has to be satisfied that the wife was unable to maintain herself. These two conditions are in addition to the requirement that the husband must have neglected or refused to maintain his wife. It has to be established that the wife was unable to maintain herself. The appellant has placed material to show that the respondent wife was earning some income. That is not sufficient to rule out application of Section 125 CrPC. It has to be established that with the amount she earned the respondent wife was able to maintain herself.

8. In an illustrative case where the wife was surviving by begging, it would not amount to her ability to maintain herself. It can also be not said that the wife has been capable of earning but she was not making an effort to earn. Whether the deserted wife was unable to maintain herself, has to be decided on the basis of material placed on record. Where the personal income of the wife is insufficient she can claim maintenance under Section 125 CrPC. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In *Bhagwan Dutt V Kamla Devi* it was observed that the wife should be in a position to maintain a standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression “unable

to maintain herself” does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 1325 CrPC.

21. It is the case of the applicant that the respondent is holding private tuition classes and earned sufficient amount for maintaining herself. No evidence is led by the applicant to establish that the respondent runs private tuition class at Latur. Even it is presumed that respondent runs a private tuition class, then also, it cannot be said that she has sufficient mean to maintain herself. At the most it can be said that she is trying to earn something to keep her body and soul together. Once it is established that the applicant has neglected the respondent, then he is duty bound to maintain the respondent. But no efforts are taken by the applicant to maintain her since the respondent left matrimonial house. Therefore, it can be said that the applicant has refused and neglected the respondent. On going through the documents produced by the respondent regarding income of the applicant, it can be said that he is earning more than Rs. 1,50,000/-. Therefore, he is duty bound to pay maintenance to the respondent. The respondent has claimed maintenance of Rs. 35,000/- from the applicant. Therefore, she is entitled for the said amount. The trial court has rightly considered the oral as well as documentary evidence properly. There is no illegality committed by the trial court while allowing the application of the respondent.

22. Learned counsel for the respondent submits that this court should be slow in disturbing any findings given by the trial court on the facts. To substantiate his point he relied on the ratio laid down in the case of Sunita Kachawaha and others Vs Anil Kachwaha reported in (2014) 16 SCC 715, wherein the Apex court in paragraph Nos. 5 and 6 observed as under:

5. The High Court has set aside the award of maintenance to the wife on the ground that the separate stay of the wife due to alleged dowry torture is not justified and that she has left the matrimonial house without any justifiable ground. As referred to by the Family Court, in her evidence, the appellant wife has clearly stated that the respondent and his mother were physically and mentally harassing her on the ground that she has brought insufficient dowry. The Family Court referred to the evidence of the appellant at length and held that she has justifiable ground to stay away from the matrimonial house and the High Court was not right in interfering with such factual findings and upsetting the maintenance order.

6. The proceeding under Section 125 CrPC is summary in nature. In a proceeding under Section 125 CrPC, it is not necessary for the court to ascertain as to who was in wrong and the minute details of the matrimonial dispute between the husband and wife need not be gone into. While so, the High Court was not right in going into the intricacies of dispute

between the appellant wife and the respondent and observing that the appellant wife on her own left the matrimonial house and therefore, she was not entitled to maintenance. Such observation by the High Court overlooks the evidence of the appellant wife and the factual findings, as recorded by the Family Court.

23. In present case the Family Court has scrutinized the evidence of rival parties properly on the point of cruelty, harassment and income of the parties.

24. Therefore, there is no need to interfere with the judgment and order dated 10-04-2018 passed by the Family Court, Latur in Petition No.E-67 of 2017 (Old Cri. M.A. No. 183 of 2015) granting maintenance to the respondent. Therefore, I pass the following order.

ORDER

- i. The application is dismissed.
- ii. The judgment and order dated 10-04-2018 passed by the Family Court, Latur in Petition No.E-67 of 2017 (Old Cri. M.A. No. 183 of 2015) is hereby confirmed.

[SURENDRA P. TAVADE, J.]