

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

**CRIMINAL REVISION APPLICATION NO.181 OF 2019
WITH APPLN/1677/2021**

Aba S/o Amruta Jadhav,
Age : 61 years, Occ; Pensioner,
R/o : Akolner,
Tal & Dist : Ahmednagar

...Petitioner

Versus

1. Sanjana Aba Jadhav,
Age : 35 years, Occ: Service,
2. Kum. Sneha Aba Jadhav,
Age : 15 yrs, Occ: Education,
3. Sarthak Aba Jadhav,
Age : 10 yrs, Occ: Education,
Respondent Nos.2 & 3 are Minor
Through natural guardian of his Mother
i.e. Respondent No.1.

All R/o : C/o Atul Vithal Landge,
R/o Akolner,
Tq. & Dist. Ahmednagar.

...Respondents

Mr. R.S. Kasar, Advocate for Petitioner.
Ms. Manjusha S. Jagtap, Advocate for Respondents.

...

CORAM : S.G. MEHARE, J.

DATED : 30th NOVEMBER, 2022

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. By consent of the parties heard finally.
2. The petitioner/husband has impugned the order granting maintenance to the respondents by the learned Judge, Family Court, Ahmednagar, in Petition No.E-147 of 2018 dated 18.03.2019.

3. The petitioner would be referred to as 'husband', and respondent no.1 would be referred to as 'wife' hereinafter.

4. The relation between the petitioner and respondents is not disputed. The husband made a statement before the Court on 16.04.2019 that he does not want to challenge the maintenance granted to the children i.e. respondents nos.2 and 3.

5. Learned counsel for the husband would submit that the impugned order is bad in law, as the learned Judge did not consider the evidence properly proving that the wife was living in adultery with a boy. Further, the order has been impugned on the ground that the wife herself left the company of the husband. The husband never refused and neglected to maintain her; therefore, she is not entitled to the maintenance.

6. Learned counsel for the wife would vehemently argue that the husband failed to prove the alleged adultery, and she deserted the husband without any just and proper reasons. The reasons given by the learned Judge are in tune with the evidence on record. The husband utterly failed to prove the so-called love letters. Hence, the learned Judge correctly did not consider it to prove the allegations of adultery. She would submit that the children are grown up, and the wife is taking their care. They are now taking higher education. Considering the liability of the husband, the quantum determined by the Judge, Family Court, Ahmednagar, was correct and

free from error. The husband has no case for interference in the impugned order at the hands of this Court. Hence, the petition may be dismissed.

7. Following points arise for the determination of this Court and finding thereon are recorded for the reasons to follow;

Sr. No.	Points	Findings
1.	Whether the impugned order is illegal, incorrect and improper?	In negative
2.	What order?	As per final order

8. **Point No.1:-** Learned counsel for the petitioner strongly relied upon the evidence of DW-3, the stepdaughter of the wife. She deposed that when her father was on duty in the military, her paramour used to come to her home and staying with her all night. The wife used to confine them in a room and lock the door from outside. In the morning, her paramour used to leave home; at that time, the wife used to open the door. She found some chits addressed to her paramour, which proves that the wife was in adultery with the said paramour. Referring to this evidence, he has vehemently argued that the evidence produced by the husband is sufficient to believe that she was living in adultery. In addition, thereto, he has also referred to some reports lodged against the wife.

9. The burden was on the husband to prove the wife was living in adultery. Sub-clause 4 and 5 of Section 125 of the Criminal Procedure

Code debar the wife from claiming the maintenance. Adultery is a breach of a marital tie by either party. The word 'living in adultery' in sub-section 4 of section 125 Cr.P.C., connotes the wife is in continuous adultery. It does not mean a single act of adultery. Direct evidence of adultery may not be possible in every case. So the conduct of the spouse allegedly in adultery and the circumstances would be such that a fair inference may be drawn. Mere suspicion may not be enough to believe the adultery.

10. The petitioner has a case that DW-3, a stepdaughter of the wife, found chits written by the wife to her paramour. She used to be confined her in night, and her paramour was staying with her all night. She had produced the alleged chits. However, the learned Judge discarded the chits as they were not proved. Mere production of the documents is inadmissible in evidence. The documents produced on record must be proved as prescribed under the provisions of the Indian Evidence Act. Herein the case, the husband utterly failed to prove that the chits were written by his wife. The next question is that if those chits were addressed to the paramour, then how were those found in the custody and possession of the wife? Be that as it may, in the absence of any evidence proving the chits, the learned Judge has committed no mistake in rejecting the said evidence. Appreciating the evidence, the Court is of the view that the husband failed to prove that the wife was living in adultery.

11. Learned counsel for the petitioner would point out that the wife, in her cross-examination, admitted that she is not ready and willing to go and cohabit with the husband. Hence, she was not entitled to maintenance.

12. Second Proviso to sub-section (3) of Section 125 Cr.P.C. provides that, if a person offers to maintain wife on condition of living with him, and she refuses to live with him, the Magistrate/Judge may consider any grounds of her refusal explained by her, and may make an order under the said Section notwithstanding any such offer if he is satisfied that there is just ground for doing so. The provision is clear that the Magistrate cannot straightway deny the maintenance, where the wife denies the husband's offers to maintain the wife with a condition to live with him. The Magistrate/Judge must satisfy that the offer is bonafide, and the wife has no reasonable grounds to deny the offer. Cruelty caused to the wife is a good ground to deny the offer of a husband to maintain her with a condition to live with him.

13. In response to the offer to maintain her on condition to live with him, the wife voluntarily explained that the husband beat her raising suspicion over her character. Hence, it was not possible for her to live with him.

14. The learned counsel for the husband would argue that the voluntary statement is not the evidence in the eyes of the law. The

husband examined his daughter to prove her adultery. However, she has been disbelieved.

15. The usual course of bonafide of the husband to maintain the wife is a petition under Section 9 of the Hindu Marriage Act. The husband, to date, did not file any such proceedings to show his *bonafide*. That apart, at one hand the husband resisted the application, alleging adultery and on the other, argue that the wife has denied to live with him, though he offered her to maintain. The offer is subject to the satisfaction of the Magistrate that the offer is genuine and *bonafide*. Cruelty is a ground to refuse, the offer as prescribed under Sub-Section (3) of Section 125 of the Criminal Procedure Code. Raising doubt on the chastity of the wife is a cruelty. The offer of the husband does not appear genuine and bonafide, it appears to have been given to avoid his statutory responsibility to maintain the wife. Therefore, his single suggestion in cross-examination giving the offer to maintain the wife shall not disentitle the wife to claim the maintenance, nor is there evidence that she has deliberately refused to cohabit with the husband. Appreciating the evidence, the learned Judge has correctly arrived at a conclusion that the wife has led the evidence to believe that the husband had refused and neglected to maintain her.

16. As far as the quantum is concerned, the income of the husband was proved. He was getting a sufficient pension. The

daughters from his first wife have been married, and the sons became major. There was absolutely no evidence that apart from the respondents i.e wife and children, he has a liability to maintain other members of his family. Considering the proven income of the husband and the requirement of daily life, the Court is of the opinion that the maintenance of Rs.5.000/- granted to the wife is correct and proper.

17. The Court has gone through the impugned order and did not find any error in the impugned order. Hence, point no.1 is answered in negative.

18. **Point No.2:-** The discussions made above led this Court to arrive at a conclusion that the impugned order is free from error and does not warrant interference. The petition fails. Now the Court proceed to pass the following order :

ORDER

- I) The revision petition stands dismissed.
- II) Record and proceedings be returned to the learned trial Court.
- III) Rule stand discharged.
- IV) Criminal Application No.1677 of 2021 does not survive and accordingly stands disposed of.

(S.G. MEHARE, J.)