

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

**CRIMINAL REVISION APPLICATION NO. 307 OF 2019
WITH
CRIMINAL REVISION APPLICATION NO. 33 OF 2021
* * * * ***

CRIMINAL REVISION APPLICATION NO. 307 OF 2019

Namrata Sandip Parkhe .. Appellant
Age. 25 years, Occ. Household,
R/o. C/o. Sunil Prabhakar Markad,
Prabhuchhaya, Gat No.54/2,
Plot No.4/2, Shiv Colony,
Jalgaon, Tal & Dist. Jalgaon.

Versus

Sandip Laxman Parkhe .. Respondent
Age.31 years, Occ. Service,
R/o. 168-B, Nateshwar Colony,
Vakharkar Nagar, Dhule,
Tal & District : Dhule.

Mr. Yogesh H. Jadhav h/f. Mr. Girish Nagori, Advocate for the applicant.
Mr. A.D. Sonar, Advocate for sole respondent.

**WITH
CRIMINAL REVISION APPLICATION NO.33 OF 2021**

Sandeep Laxman Parkhe .. Applicant
Age. 33 years, Occ. Service,
R/o.186-B, Nateshwar Colony,
Wakharkar Nagar, Dhule.

Versus

Sau. Namrata Sandeep Parkhe
Age.28 years, Occ. Service,
R/o. C/o. Sunil Prabhakar Markad,
Prabhu-Chaya, Gut No.54/2, Plot No.4/2,
Shiv Colony, Jalgaon.

.. Respondent

Mr. A.D. Sonar, Advocate for the applicant.

Mr. Yogesh H. Jadhav h/f. Mr.Girish Nagori, Advocate for the respondent.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	21.09.2022
PRONOUNCED ON	:	04.10.2022

J U D G M E N T :-

01. As both the criminal revision applications are filed against the judgment and order passed by the learned Judge, Family Court, Jalgaon dated 08.08.2019 in Petition No. E-95 of 2019, they are taken up for hearing together.

02. Heard learned Counsel for the parties and by consent, taken up for final disposal at the stage of admission.

03. The application for maintenance was initially filed in the Court of learned Chief Judicial Magistrate, which later on came to be transferred to the Family Court at Jalgaon and re-numbered as Petition No. E-95/2019. She

claimed maintenance @ Rs.20,000/- per month.

04. The facts which are not in dispute by the parties are that the marriage between the parties took place on 09.02.2015 at Jalgaon. Since July, 2016 the couple is not staying together. Wife is staying with her parents. As the parties could not pull on well together and as the wife has started residing separately, she filed application seeking maintenance under section 125 of the Criminal Procedure Code (Cr.P.C.). It is allegation of wife that in marriage her father was required to spend an amount of Rs.10 lakhs, which he arranged by raising loan etc. After few months of the marriage, the husband started telling wife that she is not good looking. She is not matching to him. He could have married with a someone better than the applicant-wife. However, the wife tolerated this as she was in the hope that some day or other the behaviour of the husband would change. After few months of marriage, the husband took the wife to Bhusaval, as he was working at Deepnagar, Bhusaval. The husband, thereafter, again started demanding Rs.1,50,000/- as he was required to repay Rs.4,50,000/- of the society loan. She also alleged illtreatment at the hands of the husband that he was not allowing his wife even to talk to her parents etc. She was required to operate for appendicitis,

wherein the expenses were borne by the parents of the wife. The husband even did not allow the wife to conceive.

05. Husband appeared in the matter by filing his say. He denied all the allegations. On the contrary, he stated that it is the wife who was not willing to stay with the family of husband. He even shifted thereafter to Deepnagar, where only husband and wife were staying. The wife, however, did not live properly. He stated that he never neglected or refused to maintain his wife. It is further case of the husband that he is not getting salary as alleged by the wife. It is his specific case that the wife is well qualified person having degree of Bachelor of Engineer (Mech.) and M.B.A. (Prod.). She was even working as Design Engineer in a company, named, Mastek Controls. When she was in service, she used to give all her salary amount to her parents without permission of husband.

06. The parties in support of their cases examined themselves on oath. Thus, about the allegations of illtreatment, neglect and refusal etc. there is evidence only in the form of oral testimony. So far as income of the husband is concerned, there are three salary certificates on record for the

month of April, May and June, 2019 i.e. Exhs.50, 51 and 52, in which the basic salary of the applicant is shown as Rs.27,910/- and dearness allowance Rs.39,632/- along with some other allowances, gross salary is shown as Rs.79,752/-. There are compulsory deductions, major deductions include Rs.8,105/- towards EPF contribution, Rs.1,250/- towards pension contribution, Rs.200/- towards professional tax and Rs.3,040/- towards income tax. These deductions are compulsory or involuntary deductions. In addition to above deductions, there is also deduction of Rs.25,604/-, which is towards repayment of loan of the society. There are other minor expenses like electricity charges, staff welfare fund, medi-claim contribution etc.

07. The learned Trial Court, after discussing the case of the applicant and the respondent, has awarded a maintenance @ Rs.15,000/- per month to the wife from the date of application i.e. 03.03.2017. The deduction towards society loan is also taken into consideration while determining amount of maintenance @ 30% of the take home salary.

08. The learned Judge of the Family Court has framed points as to whether the husband has failed and neglected to maintain the wife inspite of

having sufficient means. On this point the learned Judge, Family Court has rightly recorded a conclusion that though the parties are residing separately since 02.07.2016, there is no record to show that the husband has made any provision for maintenance of wife.

09. He further framed point as to whether the wife proves that she is unable to maintain herself. The learned Judge has rightly held that there is nothing on record to show that the wife is earning as on today. On these points the finding recorded is in the affirmative.

10. The finding is on the basis of evidence that was led before the Court. The Family Court relied upon the salary slips of the husband produced along with list Exh.19, which includes notice issued by the wife Exh.87 and reply sent by the husband to the notice Exh.88. Further the Court relied upon Exh.29 a petition filed by the husband for restitution of conjugal rights. The husband has contended that it is the wife who who on her own has deserted the husband. The wife has filed the petition for divorce at Exh.30.

11. As stated above the finding is recorded that the husband has

failed and neglected to maintain the wife. He thereafter proceeded to consider the amount of maintenance. While considering the amount of maintenance, the Family Court has considered the salary certificates of April, 2019 to June, 2019. Those are at Exhs.50 to 52, showing gross salary to be Rs.79,752.58 in the month of April, 2019, Rs.98,530.10 in the month of May, 2019 and Rs.86,738.72 in the month of June, 2019. It is pointed out by the husband that in-fact his salary is only Rs.79,752/-. From the exhibits it is pointed that salary for the month of May and June, 2019 is more than the salary for the month of April, 2019, because of over time. The salary certificate of April, 2019 shows overtime amount to be Rs.1,652.58. For the month of May, 2019, said amount is Rs.23,770.10 and for the month of June, 2019 it is Rs.11,598.72. Thus, he states that his salary is not Rs.90,000/- as claimed by the wife, but is only around Rs.80,000/- and after deduction, his salary is Rs.50,000/-. The dispute of the parties is now mainly on the amount of salary.

12. It is this order against which both the parties have come to this Court. In Criminal Revision Application No.33 of 2021 filed by the husband, he has prayed for quashing and setting aside the impugned order; whereas by

filing Criminal Revision Application No.307 of 2019 the wife has prayed for modification of the order and enhance the amount of maintenance to 30% of the current net monthly salary of the husband instead of take home salary.

13. The wife in support of her case, relied upon judgment in the case of Rajnesh Vs. Neha & Anr., 2021 ALL MR (Cri) 1172 (S.C.), wherein the guidelines/directions for granting maintenance are given. The Hon'ble Apex Court in the said judgment has considered that the maintenance laws have been enacted as a measure of social justice to provide recourse to dependent wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy. Criteria for determining the quantum of maintenance in para 62 of the judgment is provided, which is reproduced below :-

“III Criteria for determining quantum of maintenance

62. (i) The objective of granting interim / permanent alimony is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependant children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after

adult members of the family; reasonable costs of litigation for a non-working wife. [Refer to Jasbir Kaur Sehgal v. District Judge, Dehradun & Ors., (1997) 7 SCC 7. Refer to Vinny Paramvir Parmar v. Paramvir Parmar, (2011) 13 SCC 112: [2011 ALL SCR 1779].

In *Manish Jain v Akanksha Jain* (2017) 15 SCC 801:[2017(3) ALL MR 444 (S.C.)] this Court held that the financial position of the parents of the applicant-wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the Court should mould the claim for maintenance based on various factors brought before it.

On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income *ipso facto* does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications. [*Reema Salkan v. Sumer Singh Salkan* (2019) 12 SCC 303:[2018 ALL SCR (Cri) 1501]]

(ii) A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. [*Chaturbhuj v. Sita Bai* (2008) 2 SCC 316: [2008 ALL MR (Cri) 860 (S.C.)]]

The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

[emphasis supplied]

. Thus, keeping in view the ratio laid down, this case needs to be decided. It needs to be kept in mind that the maintenance is depending upon factual situation and the Court should mould the claim for maintenance based

on various factors.

14. The learned Advocate for the wife states that the wife should be paid as per the status of the husband. Considering the income of the husband, she should be paid maintenance @ 30% of the salary and for that purpose, it is argued that except compulsory deductions, no other deduction, such as society loan etc. need to be considered. The income of the husband should be counted as around Rs.80,000/- and 30% of the said amount should be paid as maintenance. The learned Advocate for the wife further placed reliance upon the judgment in the case of **Dr. Kulbhushan Kumar Vs. Smt. Raj Kumari & Anr., 1970(3) SCC 129.**

15. On the other hand, the learned Advocate for the husband submitted that while considering the amount of compensation, the Court has to take into consideration various factors. While considering the income of the husband, not only compulsory deductions but even other deductions are also required to be taken into consideration. In this case, since the husband is required to repay society loan, which he has taken for the house, also needs to be deducted.

16. The learned Advocate for the wife also relied upon judgment in the case of Nitin Sharma Vs. Sunita Sharma and Others, 2021 SCC OnLine Del 694, wherein the judgment in the case of Kulbhushan (Supra) is considered and it is held that only voluntary deductions like provident fund, income tax etc. are required to be excluded. It is further held that the husband cannot be allowed to shirk his responsibility of paying maintenance to his wife by availing loans and paying EMIs.

17. The husband's further contention is that the wife is well educated and possesses degree of Bachelor of Engineering. However, no evidence is led by him. Though it is brought on record that the wife was in employment, but after the marriage there is no evidence to show that she was doing any job or she was in service. The evidence only shows that in 2017 for some time the wife was in the service of a company, namely, Mastek Controls in Jalgaon. Nothing is brought on record by the husband to show that the wife is in service even now or that she is earning at the present.

18. Considering the submissions of both the learned Advocates and

considering the judgment of the learned Judge, Family Court in the light of the ratio laid down in the judgment delivered by the Hon'ble Apex Court, this Court finds that there is no perversity or illegality committed by the learned Judge, Family Court and the order is rightly passed. It is found that though factually the learned Judge, Family Court has not committed any mistake or though he has not committed any perversity or illegality while passing the impugned order, however, instead of considering take home salary of the husband it was necessary to consider the salary without voluntary deductions. Thus, deduction of an amount of Rs.25,604/- from the salary of the husband should not have been considered and it should have considered salary of the husband around Rs.79,752/- and ought to have granted maintenance @ 25% of the amount. Thus, 25% of the amount of Rs.79,752/- comes to Rs. 20,000/- per month.

19. Learned Trial Judge, however, while considering the amount has considered take home salary where deduction of Rs.24,000/- is also considered. Said amount is actually deducted towards installment of loan of the society. This deduction being voluntary, is wrongly considered. To that extent the order needs to be modified.

20. Now coming to the crucial question as to how much amount would be reasonable amount of maintenance in this case. From the judgment in Kulbhushan (Supra), it is held that it should be normally 25% of the income of the husband. Further from the other judgments discussed, it is clear that while considering the income of the husband what needs to be considered is the salary paid to the husband with only voluntary deductions. Voluntary deductions are not to be deducted from the amount. Thus, the amount of salary is not a take home salary but salary with compulsory deductions. Taking this into consideration, it has clearly come on record that salary of the husband with voluntary deductions comes to Rs.79,552/- as per the salary certificate produced for the month of April, 2019. Thus, considering this aspect in this case it would be reasonable to grant 25% of the salary of the husband which is shown to be Rs.79,552/- making it round figure it would be Rs.80,000/-. 25% of the said salary would be Rs.20,000/-. This Court holds that this amount would be reasonable and proper for maintenance of wife.

21. Thus, this Court holds that the applicant-wife would be entitled to

receive an amount of Rs.20,000/- per month. Hence, the following order is passed :-

ORDER

- i) Criminal Revision Application No.307 of 2019 is partly allowed.
- ii) The respondent-husband is directed to pay to the applicant-wife an amount of Rs.20,000/- (Rupees Twenty Thousand) per month from the date of the application.
- iii) Criminal Revision Application No.33 of 2021 is dismissed.
- iv) Both Criminal Revision Applications are disposed of accordingly.

[KISHORE C. SANT, J.]