

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

CRIMINAL REVISION APPLICATION NO.22 OF 2021

Shaikh Imran S/o Shaikh Pasha,
Age: 31 years, Occu: Business,
R/o Tattupura, Near Dr. Badroddin
Hospital, Near Masjid, Old Jalna.

... **Applicant**

V/s.

1. Farjana w/o Shaikh Imran,
Age: 23 years, Occu: Household
2. Shaikh Humera d/o Shaikh Imran,
Age: Minor, Occu: Nil,
Under guardianship of her mother
i.e. R.No. Farjana Shaikh Imran
Both R/o Chamda Bazar,
Near Mangal Bazar, New Jalna, Jalna.

... **Respondents**

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Advocate for Applicant : Mr. Amit S. Deshpande
Advocate for Respondents : Mr. B.G. Londhe h/f. Vishal A. Bagal

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CORAM : M.G. SEWLIKAR, J.
RESERVED ON : 2nd March, 2022
PRONOUNCED ON : 16th March, 2022

ORDER:-

This revision is preferred by the original-respondent against the order dated 19th September, 2019 in Petition No.E-25-2019 passed by the learned Family Court, Jalna, whereby the application for maintenance has been allowed and maintenance @ Rs.1500/- is awarded to each of the

respondent nos.1 and 2.

2. Facts giving rise to this application are that respondent no.1 is the wife of the applicant and respondent no.2 is the minor daughter of respondent no.1 and applicant. Marriage of applicant and respondent no.1 was solemnized on 26th August, 2012.

3. After three months of marriage, applicant, his parents and a divorced sister of applicant started ill-treating respondent no.1. They used to beat and abuse her and used to put her to starvation. They used to ask her to do additional household chores. They used to drive her out of the house. They used to blame her saying that she had brought ill-luck. They wanted the applicant to perform second marriage. They used to pass sarcastic remarks at her. Respondent no.1 used to tell all these facts to her parents. She tolerated the ill-treatment with the hope that with passage of time there would be improvement in their behavior. She gave birth to respondent no.2 on 20th December, 2013. An year before presentation of this application for maintenance respondent no.1 was driven out of the house along with respondent no.2 after subjecting her to severe beating. She took shelter at her parents place and since then she has been staying with them. Respondents have no source of income. Applicant runs a shop, dealing in sale of flowers and earns Rs.800 to 1000/- per day. His monthly income is about Rs.25,000/-

to 30,000/-. Despite having sufficient means the applicant has neglected and refused to maintain respondent nos.1 and 2. Hence, she filed this application for maintenance in the Family Court claiming Rs.5,000/- per month each to both the respondents.

4. Applicant filed say at Exhibit-31 and opposed the application. Except the solemnisation of marriage and birth of respondent no.2, applicant denied all the allegations made against him in *toto*. He contended in his say that he is the only son of his parents. He has three married sisters and one of them is Salmabee and she is a divorced woman. He has to take care of his old aged parents. Respondent no.1 did not like to live in joint family. Parents of respondent no.1 caused interference in the marital life of applicant and respondent no.1. Respondent no.1 wanted the applicant to shift to her maternal place and live with her parents as resident son in law. Applicant did not accede to this request, as a result of which, respondent no.1 left her matrimonial house and went to her maternal house. This incident took place in the month of June-2013. Applicant went to her parents to bring back respondent no.1 but she did not respond.

5. A settlement was effected between respondent no.1 and applicant. It was agreed that in case applicant ill-treated respondent no.1, she should inform the mediators about the same. It was also agreed that parents

of respondent no.1 should not cause any interference in the matrimonial life of applicant and respondent no.1 and that parents of respondent no.1 should not call respondent no.1 to their place. It was also agreed that respondent no.1 should not go to maternal place on and off. However, parents of respondent no.1 did not observe the terms of the contract. In the month of September-2013, parents came to the house of applicant and took back respondent no.1 with them. At that time she was six months pregnant. After delivery, respondent no.1 did not come back. After birth of respondent no.2, respondent no.1 did not come back to the place of the applicant. Again, there was settlement and in the month of July-2014 respondent came back to the house of the applicant. Thereafter, respondent no.1 co-habited with applicant for a period of one month. She left the house of the applicant on 28th August, 2014. Since then she is residing with her parents in their house.

6. It is further contended by the applicant that respondent no.1 filed complaint under Section 498-A of the I.P.C. She has also initiated criminal proceedings under the provisions of Protection of Women from Domestic Violence Act. Applicant has filed RCS No.492/2015 against parents of the respondent no.1 seeking perpetual injunction restraining her parents from causing any interference in the matrimonial life of applicant and respondent no.1. It is contended that respondent no.1 has been living separately of her

own accord, therefore, she is not entitled to maintenance. Applicant has not refused or neglected to maintain respondent no.1 and their daughter. He, therefore, prayed for dismissal of the application.

7. Respondent no.1 examined herself and her mother. Applicant examined himself and one Shaikh Rashid Shaikh Hamid.

8. After considering the entire evidence on record, the learned Family Court came to the conclusion that applicant neglected and refused to maintain respondent nos.1 and 2 despite having sufficient means. The learned Family Court held that applicant has business of flowers. He is a Florist. Therefore, his income must not be less than Rs.9,000/- to 10,000/- per month. Having held so, the learned Family Court awarded maintenance @ Rs.1500/- per month to respondent nos.1 and 2 each. This order is impugned in this revision.

9. Learned counsel Shri Deshpande submitted that applicant is a Florist at a place like Jalna. He has to maintain his old aged parents and a divorced sister. His income even if it is considered to be Rs.9,000/- to 10,000/- per month there are three dependents on him. Therefore, applicant cannot pay maintenance @ Rs.3,000/- per month each to respondent nos.1 and 2. He further submitted that respondent no.1 has admitted in her cross-

examination that she is ready to live with applicant only when applicant would live separately from his parents. He submits that this recalcitrant attitude of respondent shows that she wanted to live separately from the parents of applicant. He submits that anyhow respondent no.1 does not want to live with applicant in a joint family. He, therefore, prayed for allowing the application.

10. Learned counsel for the respondents Shri Londhe supported the order of the learned trial Court.

11. It is settled law that Revisional Court cannot re-appreciate evidence. It can re-appreciate evidence only when the trial Court has mis-read the evidence and has arrived at a conclusion which is perverse. In this eventuality, only Revisional Court can re-appreciate evidence. In the case at hand, it is true that respondent no.1 has admitted in cross-examination that she would live with applicant only if he resides separately from his parents. However, she has further stated that she has apprehension that applicant would ill-treat her even if applicant would live separately from his parents.

12. Admissions cannot be read in isolation. It has to be read as a whole. On reading the entire cross-examination it can be gathered that she had apprehension that even if she lived separately with applicant, she would

get the same ill-treatment. Therefore, she answered that she had apprehension that she would be ill-treated again. In the latter part of the cross-examination, she has stated that she had no complaints if applicant resided separately. She again stated that she would have no complaint if she is not subjected to ill-treatment. She further stated that despite staying separately applicant would maltreat her. Therefore, when the testimony is read as a whole, it clearly shows that she was staying separately from her husband as she was subjected to ill-treatment. Therefore, the learned trial Court did not commit any error in recording the finding that respondent no.1 was subjected to ill-treatment. I, therefore, do not find any infirmity in the appreciation made by the learned trial Court.

13. Therefore, from the evidence on record, it cannot be said that respondent no.1 is staying separately of her own accord.

14. So far as amount of maintenance is concerned applicant is a Florist. There is no documentary proof about his income. The learned trial Court has fixed income of the applicant @ Rs.9,000/- to 10,000/- per month. Considering rising price index, I do not think that amount of maintenance of Rs.3,000/- is on higher side.

15. Thus, the learned trial Court did not commit any error in allowing the application. I, therefore, do not find any reason to interfere in the order of the learned trial Court. Hence the application is dismissed.

[M.G. SEWLIKAR, J.]