

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL REVISION NO.86 OF 2021

Sau. Sweety Gopalkrushna Dhoran

Vs.

Gopalkrushna s/o Digambar Dhoran

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R. M. Tiwari, Advocate for applicant.

Mr. N. S. Warulkar, Advocate for non-applicant.

CORAM : AVINASH G. GHAROTE, J.

DATE : 18/02/2022

Heard Mr. R. M. Tiwari, learned counsel for the applicant and Mr. Warulkar, learned counsel for the non-applicant.

2. The revision challenges the impugned order dated 07.08.2021, passed by the learned Family Court, Akola in E-Petition No.69 of 2020 whereby the application for interim maintenance, filed by the applicant – wife has been rejected, on the ground, that the applicant wife, is an able-bodied person and has passed B.H.M.S. examination, and therefore, was able to earn. However, she is not doing so. It is further held that there is no reason for the applicant to stay away from the husband, and therefore, the application has been rejected.

3. Mr. Tiwari, learned counsel for the applicant, contends that right from the beginning, the applicant has taken a consistent stand that she has no qualms, to stay

with the husband and in fact, for a period from 20.07.2016 till 14.07.2018 she has stayed with her husband at Aurangabad. It is contended that since the parents, and the sisters of the applicant were harassing her, that was the reason why she was not willing to stay at the matrimonial house at Akola, with the parents of the husband. He submits that even today the applicant is ready to reside with the respondent and resume the matrimony provided the respondent would not insist the applicant, to reside at Akola with his parents.

4. Mr. Warulkar, learned counsel for the non-applicant, submits that the non-applicant has obligations towards his parents, and therefore, has to look after them for which reason, the insistence of the applicant not to reside with the husband is unjustified. He further contends that since 2018, till date in spite of the fact that the applicant is a duly qualified and able-bodied person she has made no attempt, to start her medical practice, and earn something which again would dis-entitle her from grant of maintenance. He does not dispute that the respondent - husband, is working as Assistant Manager in IDBI Bank, and is posted at Bhusawal and as of today his total emoluments is Rs.1,16,394.80/- (page 48), and there are deductions as indicated therein, leaving the net payable salary as Rs.36,847.00/-.

5. Though the applicant - wife, is an able-bodied person and is capable of earning, merely because she is not doing so does not absolve the respondent - husband

from maintaining her and in case, she is not residing with him, to make arrangements for her maintenance.

6. The parties are present in the Court today, and upon a query by the Court, the applicant - wife has categorically stated that even today she is ready and willing to reside with the respondent - husband, in case, he does not insist for her to go to the matrimonial house at Akola. The respondent - husband, upon a query being made is insistent that she will have to go to the matrimonial house at Akola whenever he goes there. This would clearly indicate, that though the applicant – wife is ready and willing to cohabit with the respondent and resume the matrimony, it is the above insistence on part of the applicant, which is making it unworkable. Even though, a proposal was given that the wife was ready to join the respondent – husband at Bhusawal where he is presently stationed and on every Saturday and Sunday, both could go to their respective parents place, the respondent - husband is not agreeable to the same and insists that the applicant, should accompany him, to the matrimonial house at Akola on every Saturday and Sunday, to which the applicant is not willing. This would clearly indicate that there may be some substance, in the insistence of the wife, not to go to the matrimonial house. In the petition under Section 125 of the Code of Criminal Procedure (hereinafter referred as “the Cr.P.C.”), in para 3, incidences have been quoted to indicate the reason why the applicant – wife, has chosen not to stay with the parents of the respondent - husband,

considering which, *prima facie* at this stage, the intention not to reside at the matrimonial house at Akola, may be justified, however, this is only based upon the averments made in the petition, and would be subject to what comes on record during the course of trial.

7. Considering that the wife is dependent upon her parents for her survival, and the respondent - husband is earning substantially, I feel it appropriate that the applicant would be entitled to grant of interim maintenance. I therefore, hold that the applicant is entitled to a maintenance of Rs.15,000/- (Rupees Fifteen Thousand Only) per month as an interim arrangement, during the pendency of the application under Section 125 of the Cr.P.C., from the date from 12.10.2020, the date of the application. The entire arrears from the date of the application for interim maintenance i.e. from 12.10.2020 till date should be deposited by the respondent - husband, before the learned Family Court, Akola, within a period of 30 days from today and the regular maintenance be paid on or before 5th day of each Calendar month till the time application under Section 125 of the Cr. P. C. is finally decided.

The Criminal Revision is disposed of accordingly.

JUDGE