

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

CRIMINAL REVISION NO.137/2018

Mr. Rajesh s/o Moreshwar Khadatkhar,
aged about 47 years, Occ. Service,
r/o Plot No. 25B, Shivanagar,
Nagpur.

.....APPLICANT

...V E R S U S...

Mrs. Geetanjali w/o Rajesh Khadatkhar,
aged about 36 years, Occ. Nil,
r/o c/o Shri Madhukarrao Chavan,
Plot No. 241, Balaji Nagar Extension,
Near Gajanan Maharaj Mandir,
Balaji Nagar, Manewada, Nagpur.

...NON APPLICANT

Ms Vaishali Khadekar, Advocate for applicant.

CORAM:- AVINASH G. GHAROTE, J.
DATED :- 19.07.2022

ORAL JUDGMENT

Heard Mrs. Khadekar, learned counsel for revision applicant. Mr. Vaidya, learned counsel for non applicant is absent.

2. Mrs. Khadekar, learned counsel for applicant, by this revision challenges the impugned judgment dated 02.05.2018, whereby the non applicant has been granted maintenance of Rs.7,000/- per month from 02.05.2018.

3. It is contended, that the non applicant was not entitled to any maintenance, in view of the fact that from 05.03.2011, the non applicant-wife has voluntarily left the matrimonial home, and therefore was not entitled for any maintenance under Section 125 (4) of the Code of Criminal Procedure. Mrs. Khadekar, relies upon the finding recorded by the Magistrate, in proceedings under Section 13 of the Hindu Marriage Act, in Petition No.A-303/2012 decided on 02.01.2015, in which it has been held that the non applicant-wife had left the matrimonial house on 05.03.2011 and had not returned.

4. Though the learned Family Court, in judgment dated 02.01.2015, has permitted dissolution of marriage on the ground of adultery and cruelty, the learned Division Bench of this Court in Family Court Appeal No. 34/2015 decided on 10.01.2020 has set aside the finding on account of adultery but has maintained dissolution of marriage on the ground of cruelty. The finding that non applicant wife has not visited the matrimonial house after 05.03.2011, without any reason, has been confirmed in para 7 thereof. While deciding petition No.E-137/2015, on 02.05.2018, the learned Family Court, though the judgment of the learned Family Court in petition No. A-303/2012 was brought to the notice

of the learned Family Court, considering that the judgment in petition No.A-303/2012 was under challenge, it was held that husband was required to independently prove that the wife was leading an adulterous life, on which, considering the evidence led, the finding has been in the negative, leading to passing of the impugned order granting maintenance.

5. However, since the learned Division Bench of this Court, in Family Court Appeal No.34/2015 has categorically recorded a finding that the wife had left the matrimonial house on 05.03.2011 without any reason, the matter would squarely fall within the scope and ambit of Section 125 (4) of the Code of Criminal Procedure. In view of that the impugned judgment cannot be sustained. Hence, the revision is allowed. Judgment and order dated 02.05.2018 passed by learned Judge, Family Court No.-3, Nagpur in Petition No.E-137/2015 is hereby quashed and set aside. The application filed by non applicant-wife under Section 125 of the Cr.P.C. is hereby dismissed. No order as to costs.

JUDGE

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Digitally signed by YOGESH
ARVIND KAHALE
Signing Date: 20.07.2022
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