

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

CRIMINAL WRIT PETITION NO. 210 OF 2023

**VISHWASHRI W/O KASHINATH NARWADE
VERSUS
KASHINATH S/O NAMDEV NARWADE**

Mr. P. B. Kadam, Advocate for petitioner
Mr. R. P. Karhadkar, Advocate for the respondent

**CORAM : R. M. JOSHI, J.
RESERVED ON : 25/08/2023
PRONOUNCED ON : 30/08/2023**

ORDER :-

1. Rule. Rule made returnable forthwith heard finally by consent of both sides.
2. This petition takes exception in order dated 30/11/2022 passed by learned Family Court, Aurangabad below Exhibit 6 in Petition-E-No. 51/2021 under Section 125 of Code of Criminal Procedure (for short 'Cr.P.C.') rejecting the application filed by the petitioner-wife against respondent/husband.
3. It is the contention of the petitioner that marriage between her and respondent was solemnized on 27/04/2015 and the said marital tie still exists. Amongst other contentions it is further case of the petitioner that respondent cheated her by disclosing false age at the time of

marriage. She further claims to have been illtreated by the respondent. Further contentions were raised about purchase of flat and four wheeler and allegations are made about failure of the respondent to either contribute to it or repayment of loan etc. She claims that respondent is not maintaining her though is having sufficient means. Petitioner, therefore filed application under Section 125 of Cr.P.C. before the Family Court, Aurangabad being Petition-E-No.51/2021 below Exhibit 6 for interim maintenance.

4. Learned counsel for the petitioner submits that the Family Court has committed error in dismissing the appeal only on the ground of alleged suppression of fact on the part of petitioner. By referring to the order in question as well as the application filed before the Family Court it is submitted that the said finding recorded by the Family Court is not in consonance with the material on record. It is his submission that in assets and liabilities are disclosed before the Family Court and further there is a reference of the proceedings filed under the Protection of Women From Domestic Violence Act (for short 'DV' Act) and hence there is no suppression of material facts on the part of the petitioner. It is further argued that the Family Court has committed error in dismissing the application on the ground that the DV proceeding bearing PWDVA Case No. 744/2019 an amount of Rs. 10,000/- is directed to be paid by

way of maintenance to the petitioner by respondent and because the the said order was not brought to the notice of the Court, the application could not have been rejected. To support his submissions he placed reliance on the judgments ***Shlokha N. Chhabria Versus Narendra A. Chhabria, 2018 DGLS(Bom.) 1188*** and ***Bhagyashree Purshottam @ Pritesh Chaudhari Versus Purshottam @ Pritesh Suresh Chaudhari, 2022 DGLS (Bom.) 5336.***

5. Learned counsel for the respondent supported the impugned order by submitting that even if it is accepted that it is open for the petitioner to file multiple applications for maintenance however for the purpose of getting the quantum of maintenance determined, it was obligatory on her part to bring to the notice of the Court the order passed in the previous proceeding. It is submitted that the findings recorded by the Family Court with regard to the suppression of the facts cannot be said to be perverse having regard to the facts of the case.

6. The application in question is filed under Section 125 of Cr.P.C. which enables a wife to file to prefer such application seeking maintenance if she is unable to maintain herself. The relevant provision of Section 125 of Cr.P.C. reads thus:

"125. Order for maintenance of wives, children and parents. (1) If any person having sufficient means

neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate (not exceeding five hundred rupees in the whole), as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

7. Perusal of the aforesaid provision clearly indicates that an order of maintenance can be passed against the person who having sufficient means neglects or refuses to maintain his wife who is unable to maintain herself. Unlike provisions of Section 18 of The Hindu Adoptions and Maintenance Act, there is no statutory obligation on the husband to maintain the wife until she is unable to maintain herself. Thus, for the purpose of filing of the application under this provision it is essential for the wife to claim that she is unable to maintain herself and that the husband is having sufficient means but neglects and refuses to maintain her. In the light of the facts of the present case when admittedly

proceeding under the DV Act was initiated and an order is passed therein directing the respondent to pay maintenance of Rs.10,000/- per month, the said fact would be absolutely relevant for the purpose of decision of the application more particularly to decide the quantum of amount of maintenance payable.

8. Provisions of Section 20(1)(d) of the DV Act provides that the aggrieved person is entitled to the maintenance for herself as well for her children including an order under or in addition to any order of maintenance under Section 125 of Cr.P.C. or any other law for the time being in force. Thus, the said provision is not in derogation but in addition to the provision under Section 125 of Cr.P.C. Hence there is no impediment in maintaining such application.

9. There is no dispute about the fact that before Family Court petitioner has failed to make any averment in respect of the filing of application under the DV Act and obtainment of relief of maintenance of Rs. 10,000/- per month against respondent. Failure on part of petitioner to disclose this material fact clearly amounts to suppression.

10. No doubt every suppression of the fact would not become of ground for denying relief however, the fact which is material and

absolutely relevant for the purpose of deciding proceeding in question could become reason to deny relief. In case of ***Shlokha N. Chhabria Versus Narendra A. Chhabria*** (supra) on ascertaining facts therein it was held that there was no suppression of material fact and hence the observations made therein by the Family Court were factually incorrect. In the instant case however material placed on record is sufficient to hold that the finding recorded by the Family Court are in accordance with facts on record and hence no perversity is find therein. Petitioner therefore would not get benefit of the said judgment. In view of above, petitioner has failed to make out the case to cause interference in the impugned order. Hence the petition stands dismissed. Rule is discharged.

(R. M. JOSHI, J.)

ssp