

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

**34 CRIMINAL WRIT PETITION NO.290 OF 2022
WITH APPLN/746/2022 IN WP/290/2022**

**RAMU DADU PRAJAPAT
VERSUS
LAXMIBAI W/O RAMU PRAJAPAT AND OTHERS**

Mr.N.R. Shaikh, Advocate for the petitioner.

Mr.Shrikant S. Patil, Advocate for respondent Nos.1 & 2.

Mrs.P.V. Diggikar, APP for the respondent/State.

**CORAM : KISHORE C. SANT, J.
DATED : 28.03.2023**

PC :-

01. Heard both the learned Advocates. The petition is taken up for final disposal at the stage of admission by the consent of the parties.

02. By way of this petition, the husband – original respondent in a proceeding under section 125 of the Cr.P.C. has challenged order dated 10.11.2021 passed by the learned Additional Sessions Judge, Dhule in Cr. Revision Application No.91 of 2017. In the revision application, the petitioner had challenged the order passed by the learned JMFC, Shirpur dated

22.06.2017 allowing application under section 125 of the Cr.P.C. The petitioner was directed to pay Rs.3000/- per month to the wife and Rs.3000/- per month to the son from the date of filing of the application and also to pay Rs.2000/- towards costs.

03. The main contention of the learned Advocate for the petitioner is that in the cross-examination of the wife it has come that she is residing separately from the husband at her own and she has no desire to stay with the family. He further points out that in the cross of the wife it has come that she is also having hot temper and many time she used to have quarrel with the husband and even they used to assault each other. He submits that this circumstance is wrongly appreciated by both the Courts below by saying that it was only husband who was assaulting wife is not correct. He points out from the evidence that he had filed application for restitution of conjugal rights and that was allowed. In spite of said fact the wife has not joined company of the husband. He relied upon judgment in the case of **Sayyed Jabbar Ali Vs. Mst. Saheba Fatima, reported in 2002 Cri.L.J.1332**, wherein this Court at Nagpur Bench has held that when there was decree of conjugal rights, wife has lived away without justifiable reason and left company of the

husband, it was held that in such circumstances the wife was not entitled to get any maintenance. He further relied upon judgment of this Court in the case of Sou. Archana Nandkishor Moon Vs. Nandkishor s/o. Vishwanath Moon, reported in 2018 ALL MR (Cri) 1084, wherein it was held that a wife is not entitled to get maintenance if she failed to prove refusal and neglect on the part of the non-applicant.

04. As against this, the learned Advocate for the respondent wife vehemently argued the matter and opposed the petition. He submits that stray admissions given by the wife cannot be considered while appreciating the evidence. Such evidence of the wife is to be considered in its entirety. He points out that in her evidence it has come that because of the harassment in the joint family which she could not bear, she left the house. This cannot be taken as a desertion. He further points out that it has come in the evidence that she has stayed with the husband separately and this cannot be certainly said that she is not staying with the husband. In the evidence it has come that in the joint family even her two elder sisters-in-law are residing and they are looking after affairs of the house. She has fairly stated that her mother-in-law in-fact supports her. He submits that therefore it is clear that the allegations

are not frivolous, but are about the facts in the house. He further submits that both the Courts below have rightly considered the evidence in its entirety and has drawn conclusion.

05. Considering the judgments, reasoning and evidence, this Court finds that this Court in its limited scope, no interference is warranted in the findings of the facts and the conclusion drawn on the factual aspects. The order of granting maintenance at the rate of Rs.3000/- cannot be said to be excessive or exorbitant. Considering the above, this Court finds that no case is made out to cause any interference. The criminal writ petition stand dismissed.

06. At this stage it is submitted by the learned Advocate for the respondent Nos. 1 and 2 that during the pendency of the petition, the petitioner – husband has deposited certain amount in this Court. The office is directed to remit the amount whatever deposited by the petitioner – husband to the Court of JMFC, Shripur, so as to facilitate the respondent-wife to withdraw the amount from that Court.

07. The Criminal Writ Petition is accordingly disposed off with no order as to costs.

08. In view of disposal of the criminal writ petition, connected Criminal Application No.746 of 2022 for stay does not survive and disposed off accordingly.

[KISHORE C. SANT, J.]