

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.43 OF 2021

Nanabhau Dhondibhau Datir,
Age 39 years, Occu. Service,
R/o. Kasare, Taluka Parner,
District Ahmednagar

.. Applicant

Versus

Suman Nanabhau Datir,
Age 34 years, Occu. Household,
R/o. C/o. Narayan Anshabapu Bhand,
Dhawan Wasti, Bhistagad, Savedi,
Ahmednagar

.. Respondent

...

Mr. Satyajit S. Bora, Advocate for Applicant;
Mr. Hemant U. Dhage, Advocate for Respondent

...

CORAM : S. G. MEHARE, J.

DATE : 11-07-2023

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsels for the parties.

2. Being aggrieved and dissatisfied with the order granting maintenance of Rs.15,000/- per month to the respondent/wife by the learned Judge, Family Court, Ahmednagar, in Petition No. E-2 of 2018 dated 17.04.2018, the husband has preferred this revision under Section 397 r/w Section 401 of the Code of Criminal Procedure (in short, "Cr.P.C").

3. The petitioner would be referred to as “the husband”, and the respondent would be referred to as “the wife” hereinafter.

4. It is not disputed that the husband and the wife resided together for four years after marriage. They have been residing separately since 2010. The husband is serving in the Army. He used to be posted at various places throughout the country. Sometimes, he was unable to take his wife with him. It is also not disputed that the husband had filed a divorce petition, and the wife had filed a petition for restitution of conjugal rights. The divorce petition of the husband was dismissed, and the petition for restitution of the conjugal rights of the wife was allowed.

5. It is also admitted that the husband has income from a salary of Rs.50,000/- per month and Rs.15,000/- to 20,000/- per annum from agriculture. The husband has responsibility for his mother only. Except for her, nobody is in his family. The wife had filed a petition under Section 125 of the Cr.P.C. alleging that when she was residing with her husband at Pathankot, he used to quarrel with her and assault her for petty reasons. When she was residing with her in-laws, they used to ill-treat and abuse her. Due to the ill-treatment and mental harassment, she had a miscarriage. Thereafter also, she was ill-treated. The husband used to come to Ahmednagar on vacation/leave but did not take care of her. Lastly, on 08.07.2015, the husband drove her out of his house

and deserted her without any reason. Notices for reconciliation were issued. Thereafter, the wife and her brother went to the house of the husband. But, he lodged a false report against them.

6. As against the above, the husband came with a case that the wife always used to go to her maternal home, and his parents used to take her back. She was insisting on him residing with him at the places of his posting. When he was posted at Varanasi, she sent him a notice for reconciliation. When she had been to his house in Ahmednagar with her brother, they abused him and his parents. Hence, he lodged the report at police station Varanasi. The wife voluntarily deserted him without any reason; therefore, he filed a divorce petition against her.

7. The learned counsel for the husband would submit that the learned Judge, Family Court discarded the allegations of ill-treatment, miscarriage, and not taking care as and when she used to come to Ahmednagar. Since no ill-treatment was proved, the wife had no cause for getting separate maintenance. The wife has utterly failed to prove that the husband has refused or neglected her. She did not discharge her burden to prove refusal and neglect. Therefore, she is not entitled to separate maintenance under Section 125 of the Cr.P.C. He would vehemently argue that the learned Judge, Family Court, erroneously held that the testimony of the husband does not inspire the confidence of the Court.

8. The learned Counsel for the husband also argued that the learned Judge, Family Court, erroneously held that the petitioner established that she had justifiable cause to reside separately from the husband. The evidence has not been properly appreciated, and wrong conclusions have been recorded. Therefore, the impugned order is erroneous and warrants interference.

9. Per contra, the learned counsel for the wife has vehemently argued that the conduct of the husband is sufficient to infer the neglect and refuse her. After issuing a notice for cohabitation, the wife went to the house of the husband, but he had lodged a false report against them. From time to time, the wife attempted restitution, but the husband searched for reasons to break the marriage. She cohabited with him for four years, which is also evidence that she was not interested in breaking down matrimonial relationships.

10. He has also argued that a matrimonial dispute happened within the four walls; therefore, corroboration is not possible for each fact. The doctrine of the preponderance of probability ought to have been applied, which the learned Judge, Family Court, did not. Failure to perform household duties and a physical relationship with him were baseless, and that may not be the grounds to refuse and neglect the wife. After considering the facts, the Court has correctly come to the conclusion that the husband

has refused and neglected to maintain the wife, who has sufficient income and sources of income. Considering his source of income, standard of living, and prices of daily needs, granting maintenance of Rs.15,000/- per month is just and reasonable.

11. The learned counsel for the husband, in reply, would vehemently argue that the interim maintenance of Rs.3000/- per month was granted to wife. She never complained that the maintenance of Rs.3000/- per month was insufficient. Therefore, the Court ought to have explained how the maintenance of Rs.3,000/- was insufficient when she was able to live with such amount. There was no reason to grant huge maintenance of Rs.15,000/- per month. She is residing with her parents. Her both brothers are in service. She had no expenses over the residence. Hence, granting maintenance of Rs.15,000/- per month is exorbitant and illegal.

12. It is correct that there may not be corroboration to a dispute that happened within four walls. Therefore, while assessing the neglect or refusal to maintain the wife under Section 125 of the Cr.P.C., the Court should apply the theory of preponderance of probability. Neglect or refusal to maintain the wife may be by words or conduct. It may be expressed or implied. Neglect or refusal may mean something more than mere failure or omission.

13. The evidence reveals that after four years of marriage, they could not reside happily. It has also been proved that the wife wanted to cohabit with the applicant where he was posted. It is true that it was not possible for the husband to take his wife with him at every place of his posting. However, that would not exonerate him from taking care and providing maintenance to her. It is evident that only to avoid the maintenance, the allegations appear to have been made against the wife that she could not do matrimonial duties and was not satisfying him physically. He did not lead evidence that she had biological defects not satisfying him sexually. Hence, the learned Judge has correctly discarded his defense.

14. If she was really not performing her household duties, then how he resided with her for four years that too at his place of posting. Such allegations are sufficient to believe the wife that husband had refused and neglected to maintain her without sufficient reasons. Since the husband was not taking her care, she had no option but to go to the shelter of her maternal family. When she had been to his house with her brother after issuing notice for restitution of conjugal rights, instead of accepting her, the husband had reported against her brother. This shows the conduct and intention of the applicant that he was not interested in his wife. So, his conduct was sufficient to believe that he refused and neglected the wife to maintain. Instead of taking a recourse of

Court of law for a better life, he had at his own, decided that their restitution is not possible and directly filed the petition for divorce. His petition has been dismissed.

15. The conduct of the husband can well be assessed from the nature of petition he had filed against his wife. He did not get divorce but a decree for conjugal rights was against him. He never showed bonafide to take her back to his home. The learned counsel for the wife submits that the execution of the restitution decree is pending; however, the husband could not be served till date. In the light of the evidence on record, merely failure to establish some of the grounds by the wife, may not be considered that the wife failed to discharge the burden to prove the neglect and refusal to maintain her by the husband. Besides, the evidence led by her, the circumstances supports her case.

16. As discussed above, the conduct of the husband proved the refusal and neglect of his wife. The decree for restitution of conjugal rights is always passed on the satisfaction of the Court that the husband without any reasonable and just cause, refused the wife to have conjugal rights. The said decree has attained the finality. It is binding upon the husband. He cannot run away from the said decree. It is making the wife's case strong and believable.

17. As far as the argument that earlier she was able to maintain with Rs.3000/- as it was granted by way of interim maintenance,

and why huge maintenance was granted is concerned, it seems to be an innovative argument. It was an interim arrangement made by the Court till the maintenance amount was determined on merit. Such is a *prima facie* observation of the Court. Whatsoever interim orders the Court passes, it merges into the final order. Therefore, the Court is not inclined to accept the argument of the learned counsel for the husband that there was no explanation how the maintenance of Rs.3,000/- was insufficient.

18. As far as the quantum of maintenance is concerned, the law is well settled that it is to be determined by considering the facts, standard of living of the family, the income of the husband and the need of the day. It has been proved that the husband was getting a salary of Rs.50,000/- per month and had also the income from the agricultural. So, if his salary income is considered along with liability to maintain his mother, the learned Judge, Family Court has correctly assessed the per capita expenses. Though, she is residing with her parents that does not mean that she would not require the money to maintain her. The husband has not been exonerated by the Court orders. Hence, wife was his responsibility. Considering the sky touching prices of daily needs, medication and other needs of a woman, the Court is of the view that maintenance of Rs.15,000/- per month in this case is just, proper and correct.

19. After having gone through the facts of the case and material

available on record and considering the arguments advanced by the learned respective counsel, the Court concludes that the impugned judgment and order is free from error, infirmity and illegality.

20. The petition is devoid of substance. Hence, the order:-

ORDER

- i) Criminal Revision Application stands dismissed.
- ii) The husband do pay the cost of Rs.10,000/- to the wife.
- iii) R & P be returned to the Family Court, Ahmednagar.
- iv) Rule stands discharged.

**(S. G. MEHARE)
JUDGE**

rrd