

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

CRIMINAL REVISION APPLICATION NO.197 OF 2019

Suyog s/o Chandrakant Mahajan,
Age 39 years, Occu. Service,
R/o A-105, Swami Residency,
Survey No.13, Near More Petrol Pump,
Pokalenagar, N.D.A. Road, Shiwane,
Pune – 411 023.

... **Applicant.**

Versus

Sou. Gouri w/o Suyog Mahajan,
Age 34 years, Occu. Nil,
Through Suresh Waman Kulkarni,
R/o C/o Bunglow No.27, Bagroja,
Hudco, Gruhashilpa Housing Society,
Delhi Gate, Ahmednagar,
Tq. and District Ahmednagar.

... **Respondent.**

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Advocate for Applicant : Ms. Jagtap Manjusha S.
Advocates for Respondent : Mr. Ubale Mahesh B., Mr. Pradhan
Laxman K.

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CORAM : S. G. MEHARE, J.
DATE : 20.01.2023

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.
2. The husband has impugned the order granting maintenance under Section 125 of the Code of Criminal Procedure (Cr.P.C. for short) passed by the learned Judge,

Family Court, Ahmednagar in Petition No.E-28 of 2018, dated 13.06.2018. The applicant is hereinafter referred to as "husband", and the respondent is a "wife".

3. The marriage was performed on 17.12.2012. It is not in dispute that on fourth day of the marriage, the wife left the house of the husband. On 02.02.2013, she filed had an application under Domestic Violence Act. However, considering the facts, the learned Judicial Magistrate First Class dismissed her application holding that the domestic violence within a short stay of four days was improbable. Thereafter, the applicant moved an application for maintenance under Section 125 of the Cr.P.C. before the learned Magistrate on 22.07.2016. Then, it was made over to Family Court, Ahmednagar. The wife has alleged against the husband and his family that on the date of the reception of the marriage, they taunted her parents. On 19.12.2012, after *Satyanarayan Pooja*, in the evening, at 6.00 p.m., the applicant told him they had raised the bank loan for the flat. She should bring Rs.1,00,000/- to pay the bank loan. When she refused, the husband smashed her head against the wall and asked her to leave home with her gift articles. The next day also, she was taunted and insulted. On 21.01.2012, she was again mercilessly beaten. Therefore, she called her

father. The applicant also insulted her father. They drove them away from the house with some articles. Hence, she left home. On 23.12.2012, the husband went to Ahmednagar and slandered the neighbours. On 15.01.2013, he again went to Ahmednagar with his friend and quarreled with her and her family. She lodged the report of the said incident on 19.01.2013 to the Superintendent of Police.

4. Learned Judge Family Court recorded the findings that the wife was insulted since marriage and harassed. The learned Judge further held that something was there between the parties that made the applicant reside separately from the husband within a very short period of their marriage. The learned Judge has also observed that the wife expressed her willingness to reside with him. Therefore, the contention that why the wife was residing with her parents without any reason that too voluntarily does not appear to be acceptable. On the contrary, it appears that she is residing with her parents only because there was some refusal and neglect on the part of the husband. The learned Judge has also observed that even though there are words against words regarding the contention made by the parties, the circumstances on record would go to show that the non-applicant has refused and neglected to

maintain her. The non-applicant has not made any provision for the maintenance of the wife. The husband has initiated proceedings for divorce against her. In spite of receipt of the reply notice, it does not appear that thereafter, the husband has made any efforts to take the wife back. All these circumstances would be sufficient to come to the conclusion that it was a husband who refused and neglected to refuse the wife.

5. Learned counsel for the husband assailed the findings of the Family Judge and would argue that the findings of the Court are against the evidence before the Court. The evidence has not been appreciated as a whole. She would further argue that within four days of marriage, the ill-treatment as alleged was quite impossible. In the application under Section 125 of Cr.P.C. she came up with a new story from the story she had in the domestic violence case. Within four days, the demand of Rs.1,00,000/- was improbable. Only to bring the case within the purview of Section 125 of the Cr.P.C., the false allegations have been levelled against the applicant that he mercilessly beat her and smashed her head against the wall. She has given the material admissions in cross-examination about the omission about the allegations she had pleaded. The learned Judge, Family Court, erroneously discarded the earlier

evidence laid by her under the D. V. Act. The learned Family Judge also did not consider a factum that the husband never refused to take her back. On the contrary, he had issued a first notice to her. When she expressed willingness to cohabit with him. He barely asked her to furnish two guarantors, that does not mean that the husband refused and neglected to maintain her. She has argued that the learned Judge did not appreciate the facts in toto and passed the impugned judgment on surmises. Therefore, it is liable to be set aside.

6. Per contra, the learned counsel for the wife supported the impugned judgment and order. He would argue that since the applicant did not cross-examine in the domestic violence proceeding, her evidence, in that case, cannot be considered in the case under Section 125 of the Cr.P.C. He supported the observations recorded in the impugned order. The wife had specifically pleaded the nature of the ill-treatment she had suffered within four days of her marriage. He would submit that the husband never arranged for her maintenance. His evidence proves his refusal and neglect to maintain the wife. There was no evidence to prove that wife had any reason to stay voluntarily at her parents' home. The wife has no source of income. She has proved that her husband refused and

neglected to maintain her. Learned Judge, Family Court has correctly discarded the evidence led in domestic violence proceedings. The order is legal, proper and correct and does not warrant interference.

7. The wife was cross-examined in domestic violence proceeding, in which she admitted that on 21.12.2012, she went to Ahmednagar voluntarily with her father. However, if the opponent wish to use previous statement, in a subsequent proceeding between the same party, he/she has to draw the attention of the witness to such statement/admission. So the person making such a statement in any previous proceeding would have an opportunity to explain the circumstances in which such admission was given. The record further reveals that the husband had issued a first notice to the wife, and she also replied to it through a lawyer. None of the notices has been placed on record. The pleading of the wife shows that she had expressed her a willingness to cohabit with him. However, the husband asked her for the guarantee of two sureties. This material aspect appears to have been ignored in the impugned judgment. Her detailed cross-examination reveals that most of the allegations pertaining to the cruelty were pleaded for the first time in the application. Bare willingness to cohabit is not

sufficient, the circumstances and the conduct of the wife must inspire the confidence to believe the wife that she really was interested to cohabit with the husband. The petition for maintenance under section 125 of Cr.P.C. was filed after the domestic violence proceeding. She could not prove the domestic violence; hence the said application was dismissed. Domestic violence is also a criminal act. Similar tests are applied to prove the domestic violence and cruelty under the maintenance proceeding. The burden to prove the refusal and neglect is on the wife. The fact did not change that she stayed with her husband for four days only. These facts have relevance with the refusal and neglect of the wife. The evidence of husband that time to time wife had declined to cohabit with him and not interested to cohabit with him has gone unchallenged. The court has to appreciate such evidence to arrive at a correct conclusion.

8. On one hand, the learned Family Court, Ahmednagar, has recorded the findings that there are words against words regarding the contention made by the parties. But, held that the circumstances go to show that the husband refused and neglected to maintain her.

9. To seek relief under Section 125 of the Cr.P.C., it must be proved that a person against whom the maintenance claimed as refused and neglected to maintain him/her. Whether she is able to maintain herself or not, is consequential. Neglect or refusal may mean something more than mere failure or omission. Neglect or refusal to maintain may be by words or conduct. The refusal and neglect has to be proved. The wife is disentitled to receive the maintenance if without sufficient reason she refuses to live with husband. Again the burden is on the wife to prove that she has sufficient reasons to stay separately from husband.

10. There is no evidence that any time husband was not ready to maintain and cohabit wife. It is not in dispute that husband had served the first notice upon the petitioner when the wife offered to cohabit with him; he asked for two guarantors. She had lodged a report against him. Therefore, asking for surety was natural. His conduct shows he never denied to maintain her. Why applicant went to the town of wife is unexplained. Unless some attempt to fetch her back was there, husband had no reason to go to her town. Unfortunately the quarrel took place there and the wife lodged the report against him. Soon after the notice of the husband was served

upon her, immediately she filed application under Domestic Violence Act her. That shows her conduct that she was making her safe. No doubt, there may be ill-treatment to the wife, but in a period of only four days' stay, it does not inspire the confidence that since the day of marriage, the wife was insulted and ill-treated. If the husband had smashed her head against the wall, she must have caused serious injuries, but except for bare words, there is no evidence. There is nothing on record to show that the husband was not ready and willing to keep the wife with him, and therefore, she was residing separately with sufficient cause. There is no evidence to believe that the husband ill-treated the wife as alleged. Whatever the evidence put forth by wife appears deficient to believe that she had sufficient reason to live separately from husband. The divorce decree against her also the another circumstance against her.

11. The Court has to arrive at a conclusion after appreciating the evidence available on record. Therefore, the reasons recorded in the impugned order that one can gather that there was something between the parties which made the wife reside separately from her husband within a short period of four days after marriage, appears not legal and correct. There must be

reasonable proof of the facts, and such facts must exist. Then, the Court may believe the facts and arrive at the proper conclusion.

12. After going through the impugned judgment and order, the Court is of the view that the evidence as a whole has not been appreciated. Since the refusal and neglect are not proven there is no question to consider the other issues. The record shows that the wife was voluntarily residing with her parents without sufficient reason.

13. For the above reasons, the Court is of the view that the impugned judgment and order warrants interference. Hence, the following order :

ORDER

- (i) The Criminal Revision Application is allowed.
- (ii) The impugned judgment and order passed by the learned Family Court, Ahmednagar, dated 13.06.2018 in Petition No.E-28 of 2018, is quashed and set aside.
- (iii) Rule made absolute. No order as to costs.

- (iv) Record and Proceedings be returned to the Family Court, Ahmednagar.

(S. G. MEHARE, J.)

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vmk/-