

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

CRIMINAL WRIT PETITION NO. 1041 OF 2020

**DEEPALI W/O ABHIJIT BODKHE
VERSUS
ABHIJIT S/O ASHOK BODKHE**

Mr. G. A. Kulkarni, Advocate for the petitioner
Mr. S. S. Jadhavar, Advocate for the respondent

CORAM : R. M. JOSHI, J.
RESERVED ON : 27/07/2023
PRONOUNCED ON : 08/08/2023

ORDER :-

1. By consent heard finally.
2. Petitioner seeks invocation of Articles 226 and 227 of the Constitution of India for taking exception to the judgment and order dated 10/10/2018 passed by the learned Sessions Court, Beed in Cri. Revision Application No. 24/2016 whereby the revision application filed by the petitioner against the judgment and order dated 01/02/2016 passed in Criminal M.A. No. 192/2014 by J.M.F.C., Kaij, dismissing the application of the petitioner for maintenance.
3. The facts which led to the filing of present petition can be narrated in nutshell as under:
 - (a) On 23/01/2007 petitioner was married to respondent at Ambajogai as per Hindus Customs and Rits. A daughter was born out of the said wedlock on 25/08/2008. It is the contention

of the petitioner that she was ill treated by the respondent and in-laws. It is alleged that they demanded the transfer of the house of her father in the name of respondent. She further stated that she was being alleged of commission of theft. There is other allegation the effect that after the girl was born in-law used to tease her in filthy language for begetting a female child. Against respondent it is alleged that he used to check her phone calls and prevent her from making calls to her parents. Finally it is alleged that she was driven out of house on 18/10/2009 and was forced to take shelter at parental home. According to the petitioner the attempt made by the relatives for reunion were in vein. The petitioner also approached Woman Grievance Redressal Cell, Ambajogai but the respondent never extended assurance to maintain her properly and peacefully.

(b) On 16/01/2014 respondent filed petition in Family Court, Pune being P.A. No. 149/2014 under Section 9 of Hindu Marriage Act for the Restitution of Conjugal Rights. Thereafter, 19/09/2014 petitioner filed Cri. M.A. No. 192/2014 under Section 125 of Cr.P.C. claiming maintenance for herself and her daughter. By order dated 01/02/2016 application was partly allowed. Maintenance was granted for the daughter but rejected for petitioner. Being aggrieved by the said rejection of maintenance,

petitioner filed Cri.Rev. No. 24/2016 before the Addl. Sessions Judge, Ambajogai. By order dated 10/10/2018 the said application came to be rejected. It is her contention that respondent filed Hindu Marriage Petition No. 44/2016 before CJSD, Ambajogai. The said petition was dismissed. It is further averred that the respondent withdrew petition for Restitution of Conjugal Rights filed by him for the reason that he had filed petition for divorce.

4. Learned counsel for the petitioner submits that the complaint and evidence led by the petitioner sufficiently demonstrate that for sufficient reason she has refused to live with respondent-husband. It is submitted that the petitioner has candidly stated before the police authority as well as in the evidence led before the Magistrate that she has lost faith and trust in the respondent and therefore it cannot be said that without any sufficient reason she is refusing to live with husband. In support of his contention he placed reliance on the judgment of the Hon'ble Apex Court in case of ***Sunita Kachwaha and Others Versus Anil Kachawaha, (2014) 16 SCC 715.***

5. Learned counsel for the respondent opposed the said contention by stating that the findings on facts recorded by the learned Magistrate are confirmed by the Sessions Court in the revision and the same cannot be interfered with in the present writ petition. It is submitted that there is oral as well as documentary evidence on record

which indicates that without there being any justified and sufficient reason, the petitioner is not living with the husband. Thus, according to him the present case is squarely covered by 125(4) of Cr.P.C.

6. As far as the exercise of jurisdiction under Articles 226 and 227 of the Constitution of India is concerned, the jurisdiction is to be exercised sparingly and to correct jurisdictional error but not to upset pure finding of facts recorded by the Courts below. Of course when findings so recorded are perverse, it would be open for the High Court to cause interfere in to the such finding.

7. Perusal of the application refers to the allegations against respondent which are general in nature in the sense that there is nothing pleaded therein to indicate that cohabitation with the respondent would be prejudicial to her physical and physiological well being. Section 125 of Cr.P.C. provides that for maintenance of wife who is unable to maintain herself. The petitioner has in her application candidly stated about she being unemployed and not being able to maintain herself. However Section 125(4) of Cr.P.C. provides for two exception to such entitlement. In case the wife is living in adultery maintenance can be refused to her, which ground is not applicable in the present case. Secondly, wife is not entitled to get maintenance if without any sufficient reason she refuses to live with her husband. The

third category of living separately by mutual consent also does not apply to this case. The question arises as to whether the present case is covered by second situation set out above.

8. There is no dispute about the fact that petitioner and respondent got married on 23/01/2007 and a daughter was born from the said wedlock. Once the petitioner has been able to show that she was unable to maintain herself and that the respondent was not able to prove that she has source of income to maintain herself, the provisions of Section 125 of Cr.P.C. must be held to be applicable to the present case. There is no dispute about the fact that since 2009-10 respondent is not staying at her matrimonial home. It is alleged by the petitioner that she was driven out of the house by respondent on 18/10/2009 whereas the respondent claims that she left matrimonial home on her own on 13/10/2011. Further there is evidence on record to show that wherein the proceedings before the Woman Grievance Redressal Cell the respondent had shown his willingness to cohabit with the petitioner but the petitioner has refused for such cohabitation. Now it is to be seen as to whether the refusal of the petitioner to live with her husband is for sufficient reason or not.

9. The respondent by cross-examination of the petitioner has brought on record that till the date of recording of evidence respondent did not perform second marriage. She further admitted that her

husband has strong desire to cohabit with her. Perusal of the application filed before the learned Magistrate does not show that the petitioner was having apprehension of physical assault at the hands of respondent nor any specific instance of even causing of mental cruelty is brought on record. The petitioner vaguely states that she does not have faith/trust in the respondent and therefore she is not ready to resume cohabitation with him. The learned Magistrate after taking into consideration the evidence led by the petitioner as well as respondent recorded findings that the petitioner is not living with the respondent without sufficient cause. In the facts and circumstances of the case well as from the material evidence on record the said findings cannot be called as perverse. Initial burden is on the husband to show that the wife is refusing to live with him without any sufficient reason. Once the said burden is discharged by the husband, onus shifts on the wife to prove that there is sufficient reason for such refusal. In the instant case except for vague statement that she has lost faith in the husband, there is absolutely no evidence to show that there is any sufficient reason for her to refuse to live with husband.

10. Considering the averments of both sides and evidence led before the learned Magistrate, it cannot be held that the findings recorded by the learned Magistrate regarding there being no sufficient reason for the wife to refuse to live with husband, is not inconsistent

with the evidence on record or perverse to cause interference therein. It would not be open for this Court to substantiate its own findings by taking different view.

11. It is pertinent to note that the respondent husband filed petition for the Restitution of Conjugal Rights and thereafter preferred a petition for decree of divorce on the ground of desertion. Though the learned Trial Court has dismissed HMP No. 44/2016 however admittedly the said judgment has been reversed by the first Appellate Court by granting decree on the ground of desertion. The grant of decree of divorce on ground of desertion, supports the case of respondent husband that without any valid reason the petitioner wife has deserted him. Thus, at least one more Court recorded findings that without just reason petitioner is not residing with the respondent. Though this facts do not have direct bearing on the outcome of the present petition, however it is additional circumstance to indicate that this case is covered by Section 127(4) of Cr.P.C. In view of above discussion this Court finds no merits in the petition. Resultantly petition stands dismissed.

(R. M. JOSHI, J.)

ssp