

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

**CRIMINAL WRIT PETITION NO. 842 OF 2019
WITH
CRIMINAL APPLICATION NO. 1793 OF 2019
IN CR.W.P/842/2019
WITH
CRIMINAL APPLICATION NO. 2870 OF 2021
IN CR.W.P/842/2019**

**SACHIN KISAN LASHKARE
VS
SANGITA SACHIN LASHKARE AND OTHERS**

Mrs. Seema R. Shaikh, Advocate for the petitioner
Smt. Rani R. Tandale, Advocate for respondent Nos.1 & 2 in
cri.wp/842/2019 and applicant in cri.apln/2870/2021
Mr. P. N. Kutti, APP for the respondents/State

**CORAM : KISHORE C. SANT, J.
RESERVED ON : 09th DECEMBER, 2022
PRONOUNCED ON : 09th FEBRUARY, 2023**

P. C.

1. Criminal Writ Petition No.842/2019 is filed by the husband of respondent No.1 and father of respondent No.2 challenging the order passed by the revisional court in the proceeding arising out of the Section 125 of the Code of Criminal Procedure for maintenance. Criminal Application No.2870/2021 is filed by the wife challenging the order dated 04-11-2017 passed by the learned Additional Sessions Judge,

Ahmednagar in Criminal Revision No.136/2015 for enhancement of maintenance of Rs.10000/- towards applicant No.1 and Rs.5000/- towards applicant No.2. Since both the matters are arising out of the same judgment and order, both the proceedings are taken up together and both are being decided by the common judgment and order. The respondents filed proceeding under Section 125 in the court of JMFC, Karjat seeking maintenance on the ground that husband is not maintaining the wife and son. He has performed the second marriage. He is getting Rs.15,000/- towards salary. The husband denied that he is refusing to maintain the wife and son. He also denied the fact of second marriage. The evidence is only oral evidence. Learned trial judge after recording the evidence directed the husband to pay maintenance of Rs.1000/- to wife and Rs.1200/- to the son per month by order dated 28-05-2015 in Misc. Cri. Application No.14/2012. Said order came to be challenged by the respondents by filing a Criminal Revision Application No.136/2015 in the Sessions Court, Ahmednagar for enhancement of the maintenance amount. In the revision it was prayed that maintenance @ Rs. 500/- to each of the applicants be directed to be paid. The learned Sessions Court by considering that the trial court has not considered that expenses are increasing day to day. The income of the husband is considered to be Rs.20,000/- and increased the maintenance amount from Rs. 1,000/- to Rs. 5,000/- for the wife and Rs.3000/- son per month.

2. The husband also filed a criminal revision application No. 150/2015 challenging the order of maintenance. However, same came to be dismissed by order dated 10-08-2017 and husband is thus, before this court challenging both the orders in this court. Though it was required for the petitioner to file two separate writ petitions challenging the separate orders, however, since the petition was filed in the year 2019 and no objection is taken by the respondents, it would not be proper after three years to direct the petitioner to file different proceedings when the matter can be decided without filing separate writ petitions.

3. The main ground of the petitioner is that there is nothing on record to show that he is deliberately neglecting to maintain the wife and son. On the contrary there is evidence to show that wife has refused to join the company of the husband without any reason. The case of the husband is that it is the wife who has no reason to leave the company of the husband. He submits that the wife could not produce any evidence to show that the husband has performed the second marriage. A specific question was asked to the wife in the cross-examination that husband is ready to take wife back, however, she has specifically answered that she is not ready to go for cohabitation. There is no explanation offered by her. In the cross-examination it is shown that twice the husband had tried to bring the wife for

cohabitation. However, it is wife who without sufficient reason has refused to cohabit with the husband. Next submission of the husband is that before the trial court prayer of the wife herself shows that she had prayed for maintenance @ Rs.1500/- per month in the application. The learned trial judge has considered the income of the husband to be Rs.6500/- p.m. The court has also considered that wife is earning Rs.2000/- per month by doing labour job. This finding is arrived by considering the evidence on record. Under such circumstances, there was no question to enhance the amount to Rs. 5000/- to the wife and Rs.3000/- to the son respectively per month. By considering the deductions the trial court has rightly considered that husband gets salary of Rs.6500/-. The learned revisional court however, has considered income of the husband to be Rs.22,188/- per month. He strenuously argued that in view of Section 125(4) of the Cr.P.C. wife is not entitled to receive any maintenance if she is voluntarily residing away from the husband without sufficient reason. Both the courts below have failed to consider this aspect. He submits that refusal on the part of the wife to live with the husband is clear from her cross-examination. He submits that wife in her cross has specifically stated that she does not want to reside with the husband. Both the courts below have thus failed to consider the provision under section 125(4) and have committed illegality. It is submitted that even the allegation about the second marriage is totally false. The trial court has specifically considered that there is no person in the name of

Archana and thus there was no question of second marriage of husband. Even the details about said marriage are not given. The learned Sessions Judge has also failed to consider this aspect. Learned advocate for the petitioner has relied upon the following judgments:

1. *2008(5) Mh.LJ 772 in Central Bank of India Vs Sion Bakers and Confectioners Pvt. Ltd. and ors.*
2. *AIR Online 2019 MP 499 Teena Bharat Parihar Vs Bharat Hansraj Parihar.*
3. *2002 Cri L.J. 1332 Sayyed Jabbar Ali Vs Mst. Saheba Fatima.*

4. Learned advocate for the petitioner submits that the petitioner is not challenging the order to the extent of son and he is only challenging the order to the extent of wife. In the case of *Teena Bharat Parihar* (supra) the court held that wife left her matrimonial home and not made any pleading in her application regarding second marriage. In the said case both the courts had rejected the application for maintenance. In the second case of *Sayyed Jabbar Ali* (supra) this court at Nagpur has held that wife would not be entitled to receive maintenance. In that case petition was filed for restitution of conjugal rights and there was decree passed. In spite of that wife did not come to reside with the husband. Though in that case also allegations were made about illicit relation with another lady however, no evidence was

laid to that effect and in that view of the matter, maintenance was refused by the trial court. The learned Sessions Judge in the revision set aside the judgment of the trial court. The high court set aside the order passed by the revisional court.

5. The learned advocate for the respondents vehemently opposed the petition. She submits that there are specific allegations against the husband that he is not maintaining the wife. When allegations are made that husband is not maintaining the wife, there cannot be any proof except oral evidence. It is further submitted that while granting the maintenance standard of living of the couple needs to be considered. The Sessions Court has rightly granted the maintenance by considering the expenses that are required day to day life and hence prayed for rejection of the petition. The respondent during the course of argument has produced on record the salary certificate of the husband wherein it is shown that he is receiving salary is Rs.61,801/- for the month of December, 2021.

6. While considering this matter in view of Section 125 (4) it needs to be considered as to whether there is any sufficient reason for the wife for not living with the husband. Sec. 125(4) reads as below:

Section 125(4):-No Wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of

proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refused to live with her husband, or if they are living separately by mutual consent.

7. In this case wife though has averred that husband has performed second marriage however, she could not give any evidence. Even the pleading is proved to be false as it is alleged that husband has married to one Archana. It is clearly brought on record that there is no such lady with this name. Thus it is clear that though in the application she has only pleaded that husband used to beat her and the husband was not providing food to the wife. Further mother of the wife used to say that husband wants to perform second marriage. However, there is nothing on record further to show that she was driven out of the house. On the contrary the husband has specially pleaded that twice in-laws had been to the parental house of the wife for taking her back, however, she did not come back. It is also taken on record in the cross that deposition with respect that husband has married with one Archana is also shown to be false and as there is no lady in this name. She could not even answer as to why there is no mention the date of the second marriage in the affidavit. She also specifically stated that she is not ready to go for cohabit with the husband.

8. In the affidavit husband has clearly stated about the dates. In the evidence he expressed desire to cohabit with the

wife. Even in the cross it was asked to the husband whether he is ready to cohabit with the wife to which the husband has clearly answered in affirmative.

9. This court, therefore, holds that husband has clearly established that he is ready to cohabit with the wife. On the contrary it is the wife who without any justifiable reason has refused to cohabit with the husband.

10. Considering all the aspects, this court finds that it was necessary for the courts to consider this aspect that it is wife who is not ready to reside with the husband without any justifiable reason and therefore, she would not be entitled to receive maintenance in view of Section 125(4). As observed earlier, the husband is again ready to cohabit with the wife, therefore, this court holds that the order passed by the learned Sessions Judge enhancing the amount of maintenance in respect of wife needs to be set aside. The order so far as the son is concerned needs to be maintained as it is as the learned court has rightly passed the order. Though now salary certificate is produced on record showing that the petitioner's salary is Rs.61,801/- and after deduction he gets Rs.24,726/- in hand per month. On considering that this court is mainly on the entitlement of the wife to receive the maintenance and therefore, it is not necessary to consider the certificate. In view of above discussion nothing survives in the criminal application

No. 2870/2021 filed by wife. Hence, the following order:-

ORDER

- a] The criminal writ petition No. 842/2019 stands partly allowed.
- b] The Criminal Application No.2870/2021 stands rejected.
- c] The impugned order dated 04-11-2017 passed by the learned Additional Sessions Judge, Ahmednagar in Criminal Revision Application No. 136/2015 enhancing the maintenance from Rs. 1000/- to Rs.5000/- per month from 13-02-2012 to the extent of wife is hereby quashed and set aside and said order enhancing maintenance from Rs.1200/- to Rs.3000/- per month from 13-02-2012 to the extent of son stands maintained as it is.
- d] In view of disposal of the criminal writ petition, pending criminal applications stand disposed off.

[KISHORE C. SANT, J.]