

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

CRIMINAL REVISION APPLICATION NO.133 OF 2021

Meera Namdev Ubale

Age: 44 years, Occu: Housewife,

R/o Plot No.11, A-Sector, Opp. Gajanan Mandir,

Garkheda Parisar, Aurangabad

Tq. & Dist. Aurangabad

...Petitioner

Versus

Namdev Kishan Ubale

Age : 60 years, Occu: Civil Engineer,

R/o : Ashok Samrat Building, Kokanwadi,

Kranti Nagar, Aurangabad.

...Respondent

...

Advocate for Applicant : Mr. Sayyed Tauseef Yaseen

Advocate for Respondent : Mr. Amol P. Ghule & Ms. Asha N. Gore

...

CORAM : S.G. MEHARE, J.

DATED : MARCH 09, 2023

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally with consent of the parties.

2. Heard learned counsel for the respective parties.

3. The petition of the petitioner/wife has been dismissed, recording the reasons that the petitioner/wife did not prove that the husband refused and neglected her without sufficient cause.

4. Learned counsel for the petitioner/wife has vehemently argued that the reasons for refusal and neglect recorded by the learned Family Court are against the law and facts. Instead of

considering the evidence led before the Court, the learned Judge Family Court has focused on all the issues mentioned in the proceeding under the Protection of Women From Domestic Violence Act (short 'DV Act') filed earlier to the said proceeding. Instead of appreciating the evidence as regards the dispute and reasons for refusal and neglect, the Court has given unnecessary importance to the discrepancies in the residential address given under the domestic violence proceedings and the present proceeding. *Prima facie*, the reasons assigned for the same are against the scope of inquiry under Section 125 of Cr.PC. The Family Court has considered that the husband has a sufficient income source and the wife is unable to maintain herself.

5. Per contra, learned counsel for the respondent/husband has vehemently argued that the reasons as regards the refusal and neglect recorded by the learned Judge Family Court, Aurangabad, are proper and correct. The wife withdrew the petition filed under the DV Act unconditionally. She did not prove that the husband refused and neglected her to maintain without sufficient reason. She has various sources of income. The husband never refused and neglected to maintain her. On the contrary, she drove him out of the house. Therefore, the impugned order is legal, correct and proper.

6. Perused the reasons recorded by the learned Judge Family Court, Aurangabad, as regards the refusal and neglect to

maintain the wife without sufficient reason. It is apparent that instead of appreciating the evidence, considering the scope under Section 125 of Cr.PC., much importance has been given to the incorrect address or a contrary residential address of the wife in the petition. The Court apparently did not consider the scope of inquiry under Section 125 of Cr.PC. The inquiry has been made as if it is a trial under criminal law. The evidence appears not properly appreciated for the purpose of deciding an application under Section 125 of Cr.PC. Therefore, this Court is of the view that the impugned order is illegal and incorrect. Since the evidence has not been appreciated instead of setting aside the order, the Court is of the view that it would be appropriate to remit the matter to the Judge, Family Court, Aurangabad for re-appreciating the evidence and write a correct judgment. Hence, the following order :

ORDER

- I) The revision application is allowed.
- II) The impugned order dated 08.03.2021 passed by the learned Judge, Family Court, Aurangabad, in Petition No.E-4/2017 is quashed and set aside.
- III) The case is remitted back to the Court of learned Judge, Family Court, Aurangabad, for re-appreciating the evidence. The parties are at liberty to lead additional evidence, if any.

(4)

IV) Record and proceedings be returned to the learned Judge, Family Court, Aurangabad.

V) Both parties are directed to appear before the learned Judge, Family Court, Aurangabad, on 03.04.2023.

VI) An endeavour shall be made by the learned Judge, Family Court, Aurangabad to expedite the matter.

VII) Rule is made absolute in above terms.

(S.G. MEHARE, J.)