

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

CRIMINAL REVISION APPLICATION NO.278 OF 2022

Mr. Vikram S/o Mahadu Rajput
Age: 66 years, Occu.: Nil,
R/o. Hendrun, Tq & Dist. Dhule.

..Applicant

Versus

Mrs. Shakuntala w/o Vikram Rajput,
Age: 63 years, Occu.: Household,
R/o. C/o. Vijaysing Pratapsing Rajput,
Babre Tq. & Dist. Dhule.

..Respondent

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Mr. P. C. Mayure, Advocate for the Applicant.
Mr. A. S. Savale, Advocate for the Respondent.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 27th SEPTEMBER, 2023.

PRONOUNCED ON : 03rd OCTOBER, 2023.

ORDER:-

1. The applicant impugns the order dated 16.07.2022 passed by the Family Court, Dhule in Petition E No.153/2021 (Old Criminal M.A. No.1412/2017), by which the applicant is directed to pay the maintenance of Rs.3000/- per month to the respondent-wife under Section 125 of the Criminal Procedure Code. The respondent-wife had approached the Family Court, Dhule seeking maintenance of Rs.5000/- per month under Section 125 of the Criminal Procedure Code.

2. The contention of the respondent-wife is that she married with the applicant, however she could not begot the child out of the matrimonial relationship. The applicant drove her out of the home. Since then, she is residing with her mother and

brother. The applicant contracted second marriage with one Pramilabai, although, the marriage between the respondent and the applicant is in subsistence. The applicant has three children out of his second marriage with Pramilabai. It is further alleged that the applicant neglected and failed to maintain the respondent, although having sufficient means. It is further alleged that, the applicant had agreed to part with agriculture land for maintenance of the respondent, however, he failed to abide his promise. The respondent has no means for her maintenance.

3. The applicant appeared before the Court in response to the notice of the Court and filed his say contending that the marriage between the respondent and the applicant solemnized in the year 1974, which is still in subsistence. The respondent cohabited with the applicant for 16 years. Unfortunately, couple is not blessed with child. The medical treatment and advice failed to fructify. In this background, due to insistence of the relatives, the applicant performed second marriage with the consent of the respondent. The applicant begot two sons and and daughter out of such wedlock. The respondent alongwith second wife and children of the applicant resided together. However, six years prior to filing of the proceeding, the respondent had suffered Chicken Guniya. Since then, she is residing at her maternal home. The applicant cared for respondent during such period, however, the respondent did not return back to matrimonial home and filed present proceeding for the maintenance.

4. It is pleaded that the applicant is aged about 65 years and dependent upon the income of his children. He has no means

to pay the maintenance, but he is ready and willing to maintain the respondent.

5. The respondent recorded her evidence. She has been cross-examined on behalf of the applicant. The applicant filed his evidence affidavit, however, did not turn up for cross-examination. The Family Court after hearing the parties, allowed the petition of the respondent and awarded maintenance of Rs.3000/- per month from the applicant.

6. Mr. Mayure, learned Advocate appearing for the applicant would submit that the applicant is aged about 66 years, whereas the respondent is aged about 63 years. He would invite attention of this Court to paragraph no.1 of the application filed by the respondent under Section 125 of the Criminal Procedure Code to point out that for more than 25 years the respondent is residing at her maternal home. He would further invite attention of this Court to the cross-examination of the respondent, wherein she admits that the applicant is old aged person and physically incapable to work, so also he is not attending the work or even he is not earning anything. He would further invite attention of this Court to the admission that the respondent left her matrimonial home on her own volition and she is residing at maternal home at her will. He further admits that the application seeking maintenance is filed on instigation of the brothers of the husband. He would, therefore, submit that none of the requirement for grant of maintenance under Section 125 of the Criminal Procedure Code exists in the present case. He would submit that admittedly the respondent is residing at maternal home as per her will. There is nothing to indicate that the applicant has

neglected or refused to maintain the respondent. He would further submit that admittedly the applicant has no source of income and physical capacity to earn. He would further submit that for more than 25 years the respondent is separately residing at her maternal home and present application is filed only on the instigation of some relatives. He would, therefore, submit that the Family Court has failed to exercise jurisdiction in judicious manner and in consonance with the spirit of provisions of Section 125 of the Criminal Procedure Code. Therefore, he urges to allow the Criminal Revision Application and set aside the impugned order passed by the Family Court.

7. Mr. Savale, learned Advocate appearing for the respondent would support the impugned order. He would submit that there is no dispute regarding the matrimonial relationship between the applicant and the respondent. The marriage still subsists. He would submit that the applicant has performed second marriage while the first marriage with the respondent is in subsistence. In that view of the matter, the respondent is justified to refuse to live with her husband. The second marriage of the husband and living with another woman would entitle wife to live separately. He would submit that the respondent is old age lady having no means to maintain her. The applicant being husband is under legal obligation to make provision for maintenance of wife. The Family Court took pragmatic view of the matter looking to the age of the parties and granted minimum maintenance of Rs.3000/- per month, which is hardly enough to meet with bare needs of the respondent. To buttress his submissions he would rely upon the judgments of the Supreme

Court of India in the case of ***Rajathi Vs. C. Ganesan***¹ and ***Shamima Farooqui Vs. Shahid Khan***².

8. Having considered the submissions advanced, it is apparent that the matrimonial relationship between the parties is undisputed. Admittedly, the applicant performed second marriage during subsistence of marriage with the respondent. The respondent still resided with him for many years. However, presently she is residing at maternal home. Pertinently, litigation has started, when they are in the advanced stage of life.

9. Section 125 of the Criminal Procedure Code has been brought into statute book with specific object to provide maintenance to the wife, who is unable to maintain herself. The husband is made statutorily responsible to make arrangement for maintenance of destitute wife. In the facts of the present case, admittedly wife is residing separately since long. However, from the pleading of the parties, it is difficult to gather exact period of their separation. In the maintenance application, the respondent pleaded that since 25 years she is residing separately from husband. However, during the cross-examination, it is brought on record that she suffered Chicken Guniya 5-6 years prior to filing of the application, she left the matrimonial home and since then, residing with her mother and brother. Be that as it may, the obligation of the husband to maintain his wife is on higher pedestal. The Supreme Court of India in the matter of ***Shamima Farooqui Vs. Shahid Khan*** (supra) observed as under:

“Grant of maintenance to wife has been perceived as a measure of social justice. An order under Section 125 CrPC

1 (1999) 6 SCC 326.

2 (2015) 5 SCC 705.

can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 of CrPC, unless disqualified, is an absolute right. Thus, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning."

10. Although, during the cross-examination of the respondent, she admits that the applicant is old age person and incapable of earning, there is nothing on record to show that he has no means to maintain the respondent. Even otherwise, in light of the observations of the Supreme Court of India, the legal obligation of applicant to maintain the wife will subsist. Pertinently, the applicant has not stepped into the witness box in support of his contention in the reply. The solitary admission on the part of the respondent cannot be used to defeat the claim raised under the provisions of Section 125 of the Criminal Procedure Code, being part of the social legislation. The amount of Rs.3000/- determined towards maintenance by the Family Court is hardly enough for bare survival. There is nothing on record to indicate that the respondent has otherwise any means to maintain herself.

11. So far as second contention of the applicant that the respondent is residing separately on her volition would not be sufficient to dislodge her claim, particularly when the applicant has remarried with the another woman. That would entitle the

respondent-wife to live separately and such act of the applicant can also be interpreted as neglect or refusal by husband to maintain her. Pertinently, the Supreme Court of India in the matter of ***Rajathi Vs. C. Ganesan*** (supra) observed as under:

“The High Court also observed that the wife did not plead as to since when she was living separately. This is not quite a relevant consideration. Even though wife was unable to prove that husband has remarried, yet the fact remained that the husband was living with another woman. That would entitle the wife to live separately and would amount to neglect or refusal by the husband to maintain her. The statement of the wife that she is unable to maintain herself would be enough and it would be for the husband to prove otherwise.”

12. Pertinently, the parties are Hindu. Even, considering the aforesaid situation in terms of Hindu Personal Law, particularly the provisions under Section 18 of the Hindu Adoptions and Maintenance Act, 1956, the sub-clause (2) of Section 18 permits Hindu wife to reside separately without forfeiting her right to claim maintenance, if her husband has any other wife living. In that view of the matter, even the admission of the respondent in her cross-examination that she is residing separately on her own volition is considered, that could not affect her right to receive maintenance under the provisions of Criminal Procedure Code. The Family Court has given due consideration to the factual aspects of the matter, so also legal issues while delivering the impugned judgment. No infirmity can be found in the approach of the Family Court. Hence, the Criminal Revision Application sans merit and is accordingly dismissed.

(S. G. CHAPALGAONKAR)
JUDGE