

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

CRIMINAL WRIT PETITION NO. 1856 OF 2022

Shaikh Salauddin Shaikh Shafiuddin Maniyar .. Petitioner

Versus

The State of Maharashtra and another .. Respondents

Mr. Naseem R. Shaikh, Advocate for the Petitioner.

Mr. P. M. Kulkarni, APP for Respondent No. 1.

Smt. S. M. Patil (Kulkarni), Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 30th MARCH, 2023.

P. C. :-

. Heard learned advocates for the parties. Taken up for final disposal by consent of the parties.

2. The husband has filed this petition challenging the judgment and order passed by the learned District Judge – 2, Amalner in Criminal Revision Application No. 2/2020 dated 20.09.2022 whereby, the revision of the husband came to be dismissed with cost and the judgment and order passed by the learned Trial Court in Criminal Application No. 206/2017 dated 04.12.2019 is confirmed. By way of judgment, the learned Trial Court had ordered the husband to pay to his wife – present respondent No. 2 an amount of Rs. 4,000/- (Rs. Four Thousand only) per month along with cost of Rs. 2,000/- (Rs. Two Thousand only).

3. It is the case of husband that, from the evidence it clearly appears that, it is the wife who is staying with her parents on her own. Though she is suffering from paralysis, the husband has made every attempt to give her best possible treatment. He thus submits that, unless there is refusal on the part of husband, she would not be entitled to receive the maintenance. He submits that, both the Courts below have ignored the evidence and specifically the cross-examination of the wife where she has admitted that she is staying with her parents on her own. He further submits that, both the Courts have erred in relying upon and by only believing the probable case of the wife that because of her ailment that is paralysis it is the husband who may not have treated her well. It is submitted that, no orders can be passed on assumption and prays for quashing and setting aside the impugned judgment and order.

4. As against, learned advocate for respondent-wife argued that, in fact, there is clear pleading in the application stating that, after she suffered paralytic attack, the husband told her that now she is of no use to him and he will get married again with other lady and it is for this reason she went to her parents' house and is staying with the parents. From the cross-examination it is specifically pointed out that, though there is an offer by the husband that he is ready to take the wife, however, she has clearly stated that, she cannot believe on the word of

husband due to her prior experience.

5. Learned advocate for the petitioner relied upon the judgments of this Court in the cases of (i) Archana Nandkishor Moon and anr. Vs. Nandkishor Vishwanath Moon reported in 2018 ALL MR (Cri) 1084 (ii) Ramkrushna Somaji Nadekar Vs. Smt. Manjusha Ramkrushna Nadekar & another reported in 2012 ALL MR (Cri) 3615 wherein, it is held that, when the wife is voluntarily residing away from the husband, then she would not be entitled to get order of maintenance. In the case of Arachana Nandkishor Moon and anr. (supra), it was a case where a decree was already passed by the Civil Court for restitution of conjugal rights in favour of husband. In the said case, there was no sufficient averment as to ill treatment. In the case of Ramkrushna Somaji Nadekar (supra) also there was a decree of conjugal rights in favour of the parties and in spite of that, the wife was not residing with the husband.

6. Learned advocate for respondent-wife relied upon the judgment of this Court in a case of Shaikh Bashid Vs. State of Maharashtra reported in 2019 SCC Bombay 220 wherein, it is held that, when the wife is not comfortable because of the approach and attitude of the parents of her husband and the treatment given to her by them, and if she is residing separately for that reason then it is good cause for living

separate and demand for maintenance. The learned J.M.F.C. has also relied upon this judgment.

7. Considering the submissions and judgments cited above, this Court finds that, in the facts of the case, the wife has sufficiently shown that, she has reason to stay away from the husband. Though there is admission that, she is residing away from the husband on her own, still she has justified the same by giving other evidence. This Court finds that, since both the Courts have given finding of fact in favour of the wife, this Court in limited jurisdiction need not take any other view when no perversity is noticed by this Court in any of the judgments.

8. In view of this, this Court holds that, the writ petition deserves to be dismissed.

9. The Criminal Writ petition stands dismissed.

(KISHORE C. SANT, J.)

PS.B.