

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

CRIMINAL REVISION APPLICATION NO.321 OF 2018

Mujammil s/o. Muktar Shaikh,
Age 32 years, Occu. Private Service
and Business, R/o. Tajoddin Baba Nagar,
Latur, District Latur

.. Applicant
(Original Respondent)

Versus

Smt. Shabana w/o. Mujammil Shaikh,
Age 23 years, Occu. Household,
R/o. Tajoddin Baba Nagar, Latur,
At present Sale Galli, Latur,
District Latur.

.. Respondent
(Original Petitioner)

Mr. Vinod Y. Bhide and Mr. Patel Syed Farhan S.A., Advocates for
Applicant;
Mr. Sunil B. Jadhav, Advocate for respondent

CORAM : S. G. MEHARE, J.

RESERVED ON : 22nd NOVEMBER, 2022

PRONOUNCED ON : 11th JANUARY, 2023

ORDER :

1. The husband, dissatisfied with the order of the maintenance passed by the learned Judge, Family Court, Latur, in Petition E-124 of 2017, dated 23.11.2018, preferred the present revision. The present petitioner would be referred to as “respondent” and the respondent would be referred to as the “applicant”, hereinafter.

2. The applicant and the respondent have allegations against each other that they had concealed their first marriage from each other. The respondent came with a stand that the first marriage of the applicant was in existence. It was not validly and legally dissolved as per Muslim law. However, he admitted in his reply that their marriage was performed in one hotel at Latur in the absence of their family members. The false allegations of performing the marriage at the house of the applicant paying cash of Rs.50,000/- and 20 grams of gold and other household utensils worth Rs.50,000/- have been made. On 28.07.2015, the applicant told the respondent that their marriage was invalid, as per Islamic *Shariyat*. Hence, he should never meet her. Then she left home. Suddenly, on 27.01.2016, she lodged a false report against him and his family members. Denying ill-treatment to her, he alleged against the applicant that she had tried to commit suicide when she was cohabiting with her first husband. He is a labourer and hardly gets Rs.2000 to Rs.2,500/- per month. He has the responsibility to maintain the family.

3. The applicant alleged that since the respondent did not disclose his first marriage when she went to cohabit with him, she learnt that the respondent is married and has children. He told her that he would maintain both wives. However, after 15 days, he started harassing her mentally and physically. An attempt was made to kill her by feeding rat killing poison in chapati. The applicant kept her in a separate

rented room. However, he did not take her care. After some days, he stopped visiting that room. The parents of the respondent were asking her that unless she brought Rs.2 Lakh, they would allow her to enter the home. Her parents were poor, hence she could not fulfill the demand. The respondent is in private service. He has a small businesses like poultry and goat farm . He earns Rs.40,000/- per month. She is unable to maintain herself.

4. Appreciating the evidence, the learned Judge, Family Court, Latur believed the applicant and held that the respondent refused and neglected to maintain her. The respondent has sufficient means of income and was granted the maintenance of Rs.3,000/- per month.

5. The learned counsel for the respondent vehemently argued that since the applicant is not a legally wedded wife of the respondent, she is not entitled to claim the maintenance. He further argued that she did not stay for a single day. She lied before the Kazi that she would produce the *talaqnama*, but did not produce. She did not prove that her marriage was performed at the house of her parents. He referred to the evidence of the witnesses and argued that her witnesses disproved her case that her marriage was performed at her house.

Referring to the evidence, he would argue that the applicant failed to prove that the respondent neglected and refused to maintain her without any reasonable cause.

6. Per contra, learned counsel for the applicant would submit that the respondent admitted the marriage. The respondent took her to his home. At that time, the applicant learnt that he was already married. She was ill-treated and kept in a separate room. There also did not take care. He tactfully kept her in a rented room and refused to maintain her. She has no source of income. She is a legally wedded wife. Hence, the applicant is entitled to maintenance. The maintenance quantified by the learned Judge, Family Court, Latur, is correct and appropriate. There were no errors on the face of the record or in the impugned order.

7. Following points arise for the determination of this Court, and findings thereon are recorded for the reasons to follow:-

Nos.	Points	Findings
i)	Whether the impugned order is legal, .. correct and proper?	In affirmative.
ii)	What order?	.. As per the final order

Point No.1 :

8. Only a legally wedded wife is entitled to maintenance under Section 125 of the Code of Criminal Procedure (for short, "Cr.PC."). The Magistrate Court has limited power to examine the issue of the legality of marriage. Section 125 of the Cr.PC. has been enacted for

social justice and specifically to protect women and children, as well as the old and infirm poor parents. It is a social beneficial legislation. The inability of the wife to maintain herself, neglect and refusal to maintain the wife by the husband though having sufficient means is entitled to claim the maintenance. However, if the wife is living in adultery or if, without any sufficient reason, she refused to live with her husband or if they were living separately by mutual consent, she would not be entitled to receive the maintenance allowance.

9. It is evident that the applicant, as well as the respondent, were already married. Though the place of her marriage has not been proved, the respondent admitted that he married the applicant in one hotel in Latur. After the marriage, the applicant went to cohabit with him. That time, she learnt about his first marriage. To prove the case, the applicant deposed that at the time of the marriage, her first marriage was dissolved by *talaqnama*. The respondent knew it well. Though the *talaqnama* was not presented or supplied to Kazi, the evidence of Kazi proves that the applicant has disclosed about her first divorce. Therefore, it cannot be accepted that the applicant had concealed her first marriage. The copy of the *talaqnama* with her first husband has been placed and proved before the Court. The applicant has complained the illtreatment and harassment of the respondent. A crime has also been registered against the respondent and his family. Producing the *talaqnama* she has proved that her earlier marriage was

dissolved. The learned Judge, Family Court, correctly appreciated the evidence and recorded the finding that the applicant was the legally wedded wife of the respondent.

10. It is not disputed that the applicant married another person in 2008. The *talaqnama* produced on record proves that she was divorced in the year 2013. Thereafter, in the year 2015, she married the respondent. It is evident that the applicant had disclosed her first marriage to the respondent. However, he did not disclose his earlier marriage. When the applicant went to cohabit, there she learnt that the respondent had a son from his first wife, and they were residing under one roof. The respondent promised to maintain both wives happily. However, his first wife was not satisfied. Therefore, she threatened the applicant to divorce her husband. Be that as it may, they had a marital discord, and the applicant was separated from her husband and his family. There is nothing on record that any time before filing the proceeding before the Judge, Family Court, Latur, the respondent has tried to fetch her back or pay a single penny towards the maintenance on his own. The conduct of the respondent reveals that he did not pay heed protecting the matrimonial tie nor provided the financial as well as other support to the applicant. She was to lodge the report against the husband and his family for coercive demand of dowry and ill-treatment given to her.

11. The respondent was well-bodied and able to earn his livelihood. The learned Judge held the income of the respondent for Rs.60,000/- from his business. Considering the income of the respondent and no source of income to the applicant, the learned Judge, Family Court, Latur, quantified the maintenance of Rs.3,000/- per month. Considering the minimum livelihood requirements and the inflation of the day, it cannot be said that the respondent is unable to pay Rs.3,000/- per month to the wife to perform his marital obligations.

12. The present revision is the first remedy against the impugned order before this Court, the relevant principles of laws have been observed, and the record has been examined thoroughly. The record does not disclose that the respondent ever provided her with the maintenance or showed a willingness to cohabit with her. It is also evident that the respondent refused and neglected to maintain the applicant. She has no independent income source. So, naturally, she would depend upon the respondent. There is no iota of evidence that he had no income at all. The respondent was an able-bodied person. So, it is presumed that he was earning sufficient money to pay the separate maintenance to the wife. The learned Judge was legally correct in quantifying the maintenance, keeping in mind the minimum expenses of livelihood, their standard of living at the time of the dispute, and the responsibilities of the respondent.

13. If the wife is not legally wedded, she is not entitled to maintenance. However, in the case at hand, the evidence proves that the applicant was the legally wedded wife of the respondent. It was his obligation to maintain his wife.

14. The applicant had proved her case. However, the respondent did not shatter the case of the applicant. After examining the record, this Court did not find that the impugned order was illegal, improper and incorrect. There appears to be no substantial ground to interfere with the impugned order. Hence, point no.1 is answered in the affirmative.

Point No.2 :

15. The discussion made above led this Court to conclude that the order impugned before this Court is legal, proper and correct. There are no grounds to interfere with the impugned order. Hence, the following order:-

ORDER

- (a) The application stands dismissed.
- (b) No order as to costs.
- (c) R & P be returned to the learned Family Court, Latur.

(S. G. MEHARE, J.)