

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL REVISION APPLICATION NO.258 OF 2018
WITH
INTERIM APPLICATION NO.2435 OF 2021
IN
CRIMINAL REVISION APPLICATION NO.258 OF 2018**

Dhanashri Rupesh Nagpure & Anr. ... Applicants
V/s.
Rupesh Ramesh Nagpure and Anr. ... Respondents

Mr. Vilas B. Tapkir for the applicants.

Mr. Vaibhav R. Gaikwad for respondent No. 1.

Ms. M.R. Tidke , APP for respondent no.2/State.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 24, 2023

P.C.:

1. Wife has filed present criminal revision application challenging order dated 6th March 2018, passed by the Family Court Pune refusing to grant maintenance to the wife on the ground that she had refused to cohabit with the husband. By the impugned order, the Family Court has directed husband to pay maintenance of Rs.3,000/- per month to the daughter from the date of order.

2. On consideration of the impugned order and in particular paragraphs 22 and 23, it appears that the Family Court has misconstrued Sub-section 4 of Section 125 of Code of Criminal

Procedure, 1973. Sub-section 4 of Section 125 reads thus:

“(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 refuses to live with her husband, or if they are living separately by mutual consent.”

3. Meaningful reading Sub-section 4 makes it clear that the right of maintenance conferred under sub-section 1 of Section 125 has been eclipsed subject to three conditions

- I) If she is living in adultery.
- II) If, without any sufficient cause, wife refuses to leave with husband.
- III) Parties living separately by mutual consent.

4. The first and third condition is not the subject matter of dispute between the parties. The Family Court was, therefore, concerned with second condition namely that the wife without any sufficient reasons refuses to live with husband. While denying maintenance on the said ground, it was expected from the Family Court to independently consider both the ingredients of second eventuality. While denying maintenance, it was obligatory on the Family Court to consider as to whether the wife has refused to live with husband without any sufficient cause.

5. On perusal of the pleadings, it appears that the wife has pleaded reasons for living separately. The said averments have been denied by the husband. The Family Court while denying

maintenance relying on Sub-section 4 has considered only second part of the eventuality that the wife has refused to live with her husband. The sufficiency of reasons as mentioned in the application has not been adverted to in paragraphs 22 and 23, with the result material facts relevant for adjudication of rights under Section 125(1) have not been adjudicated upon by the Family Court.

6. In the absence of such adjudication and consequential finding, the impugned order suffers from error of law namely failure to adjudicate on relevant issues.

7. For the aforesaid reasons, the impugned order cannot be sustained. The impugned order is, therefore, set aside.

8. The Family Court is directed to reconsider application below Exhibit 33 in Petition No. E-5 of 2016. During pendency of said adjudication, the husband shall continue to pay amount of Rs.3,000/- to the daughter.

9. Considering the fact that the application for maintenance has been rejected in the year 2018, the Family Court is directed to decide the application below Exhibit 33 within three (3) months from the date of appearance of the parties.

10. Parties shall appear before the Family Court on 6th March 2023.

11. The Criminal Revision Application is disposed of in above terms. No costs.

12. In view of disposal of the criminal revision application,

nothing survives in the interim application and the same stands disposed of accordingly.

(AMIT BORKAR, J.)