

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL REVISION APPLICATION (REVN) NO. 82 OF 2012

APPLICANT : Shri Rajendra s/o Yuvraj Sahare, Aged
(Ori. Non-applicant) about 51 years, Occ.: Service, R/o.
Northern Coalfields Ltd. Singrauli,
Dist. Sidhi (M.P.).

//VERSUS//

RESPONDENTS : 1. The State of Maharashtra,
(Ori. Applicants)

2. Smt. Hema Divorcee of Rajendra Sahare, Nee Hema D/o. Kishor Jambhulkar, Aged about 41 years, Occ.: Service.

3. Ku. Samiksha D/o. Rajendra Sahare, Aged about 14 years, Occ.: Student, (Through her natural guardian mother, Respondent No.2 Smt. Hema Divorcee of Rajendra Sahare).

Both Respondent Nos.2 & 3 are R/o. Buty Chawl, Gaddi Godam, Nagpur.

Mr. R.M. Daga, Advocate for the Applicant.
Ms. Mayuri Deshmukh, APP for Non-applicant No.1.
Mr. M.B. Naidu, Advocate for Non-applicant Nos.2 & 3.

CORAM : G. A. SANAP, J.
DATED : 27th MARCH, 2023.

ORAL JUDGMENT

In this criminal revision application challenge is to the judgment and order dated 11th April, 2012 passed by the learned Judge of the Family Court, Nagpur, whereby the learned Judge allowed the petition filed by the non-applicant Nos.2 and 3 for maintenance under Section 125 of the Code of Criminal Procedure, 1973 (for short "Cr.PC").

02] The facts relevant for deciding this revision application are as follows:

The applicant is the original respondent. The non-applicant Nos.2 and 3 are the petitioners in the petition filed under Section 125 of the Cr.PC for maintenance. Parties would be referred by their nomenclature in the petition filed under Section 125 of the Cr.PC. The petitioner No.1 was married with the respondent on 14th December, 1997. The petitioner No.2-Ku. Samiksha is the daughter of the petitioner No.1 and the respondent. It is the case of the petitioner No.1 that after marriage, they resided happily for a short period. In the month of March, 1998 due to the body hormone changes, there was lactation to the

petitioner No.1. It is called as hyperprolactemia in medical terms. It is stated that as the lactation to the petitioner No.1 started within 2 to 3 months after the marriage and at the time she had not conceived, the respondent expressed doubt about the character and fidelity of the petitioner No.1. The respondent made false and wild allegations against the petitioner No.1. In order to clear the doubt of the respondent, the petitioner No.1 agreed for the medical examination and got her medically examined at Government Medical College, Jabalpur. It is the case of the petitioner No.1 that after medical examination, the doctor informed that the lactation may occur due to hormonal changes. The respondent despite this confirmation started mental torture to the petitioner No.1. The respondent according to the petitioner No.1 was reeling under misconception that before her marriage, she had aborted and, therefore, there was lactation to her. The respondent on more than one occasions told the petitioner No.1 that she had close relations with her cousin i.e. son of maternal uncle.

03] It is the case of the petitioner No.1 that when all these mental torture and sufferings became unbearable, she informed this fact to her parents. Her parents went to them at Singrauli. They tried to give an understanding to the respondent, but the

respondent was not ready to listen to them. The respondent compelled the petitioner No.1 and her parents to leave his house.

04] It is stated that when the petitioner No.1 left the house of the respondent, she had conceived. The petitioner No.1 had a genuine desire to cohabit with the respondent. The petitioner No.1 and her parents made attempts for reconciliation, but there was no positive response from the respondent. The respondent continued to make the baseless and wild allegations, doubting the character and chastity of the petitioner No.1. The daughter was born on 12th February, 1999. The news of the birth of the baby was conveyed to the respondent. The respondent paid a visit to the petitioner No.1. However, he did not attend the naming ceremony of the petitioner No.2. The petitioner No.1 thereafter filed a petition for restitution of conjugal rights against the respondent. In the said petition, the respondent filed written statement and made wild allegations of illicit relations of the petitioner No.1 with her cousin. The petitioner No.1 and her parents thereafter stopped all attempts for reconciliation. The restitution of conjugal rights petition was not, therefore, prosecuted. It is stated that the petitioner No.1 on account of ill-treatment and torture meted out to her suffered a mental trauma and, therefore, she started residing at her parents'

house. The respondent did not pay the maintenance to the petitioner Nos.1 and 2. The petitioners, therefore, claimed the maintenance from the respondent.

05] It is the case of the petitioners that respondent is serving as an Executive Engineer. In the year 2005, his monthly salary was Rs.30,000/-. The petitioner No.1 was staying at her parents' house at their mercy. Her father was a Retired Principal. In order to lessen his financial burden, the petitioner No.1 has started working as a Teacher in the school on temporary basis. She was getting salary of Rs.3,500/- per month. It is the case of the petitioner No.1 that her salary was meager and not sufficient to meet their basic requirements. The respondent is having sufficient means. His parents were not dependent upon him. The petitioners by notice dated 13th July, 2004 called upon the respondent to pay them maintenance. The respondent denied to pay the maintenance as well as challenged the entitlement of the petitioners to get the maintenance on the ground that the marriage between the petitioner No.1 and the respondent was dissolved by a decree of divorce. It is stated that the petitioner No.1 even if is divorcee, is entitled to get the maintenance. They, therefore, prayed for maintenance.

06] The respondent filed the reply and opposed the application. He admitted his marriage with the petitioner No.1. He also admitted that they cohabited together at Singrauli. According to the respondent, he and petitioner No.1 led peaceful marriage life till 20th June, 1998. He has contended that till 20th June, 1998, the petitioner No.1 had not conceived. As far as the lactation to the petitioner No.1 is concerned, it is his case that it was not due to hormonal changes. According to him, it was abnormal thing. He, therefore, consulted the doctor. The doctor opined that it was not a normal thing to have a lactation. The respondent has denied that he started doubting the character and chastity of the petitioner No.1 and made false allegations against her. According to him, the petitioner No.1 was examined in the Government Hospital at Jabalpur. Dr. Mrs. Lele on examination of the petitioner No.1 gave an opinion that the lactation was due to the abortion before the marriage. It is contended that, therefore, the respondent called the parents of the petitioner No.1 at his place and apprised them about the real state of affairs. He informed them that the petitioner No.1 had intimacy with her cousin. There was abortion of the petitioner No.1 before marriage and, therefore, there was lactation to the petitioner No.1. The parents of the petitioner No.1 got angry and they abused the lady Medical Officer of the Government Medical

College, Jabalpur. They also abused the respondent. They extended threats to the respondent and his parents. The parents of the petitioner No.1 in order to hide this fact, avoided the discussion and left the house of the respondent with the petitioner No.1. The respondent contended that he made attempts to bring back the petitioner No.1, but her father refused to send her back. When all his efforts did not bear fruits, he filed a petition for divorce on the ground of desertion. In the said petition, the petitioner No.1 did not appear. The petition was decreed *ex-parte*.

07] It is contended that the petitioner No.1 is a divorcee. She is not entitled to get the maintenance. She left the company of the respondent without any reasonable cause. It is further contended that the petitioner No.2 is not the daughter of the respondent and as such he is not liable to pay the maintenance to the petitioner No.2. It is further contended that the petitioner No.1 is doing service. She is getting handsome salary. The respondent has performed the second marriage and in the said marriage he has one son. The son is suffering from heart ailment. He is required to spend huge amount for the treatment of his son. His parents are dependent upon him. On these grounds, the respondent opposed the application.

08] At this stage, it is necessary to mention that initially by order dated 4th June, 2008, the petition was decided by the Family Court, Nagpur. The claim of the petitioner No.1 was rejected. The claim of the petitioner No.2 was allowed. The respondent was directed to pay the maintenance at the rate of Rs.1,500/- per month to the petitioner No.2. The petitioners have challenged the said order of the Family Court in this Court by filing Criminal Application No.136/2008. This Court (Coram: A.P. Bhangale, J.) by order dated 6th June, 2011 allowed the application and set aside the order passed by the learned Judge of the Family Court. This Court remitted the matter back to the Family Court to decide it afresh in accordance with law. The learned Judge of the Family Court thereafter granted an opportunity of hearing to the parties and allowed the said petition by order dated 11th April, 2012. The respondent being aggrieved by this order is before this Court.

09] I have heard Mr. R.M. Daga, learned advocate for the respondent and Mr. M.B. Naidu, learned advocate for the petitioners. Perused the record and proceedings.

10] The learned advocate for the respondent submitted that the petitioner No.1 left the matrimonial home without any

reasonable cause. The learned advocate submitted that within three months of the marriage, the lactation to the petitioner No.1 started and, therefore, in order to ascertain the cause behind the same, the petitioner No.1 was taken to the Government Medical Hospital, Jabalpur and she was examined. The learned advocate submitted that after examination, the Medical Officer Dr. Mrs. Lele informed the respondent that before marriage, there was abortion of the petitioner No.1, therefore, there was lactation to her. The learned advocate submitted that when the parents of the petitioner No.1 were confronted with this medical opinion and questioned about the same, they quarrelled with the respondent and in order to avoid further discussion on this topic, they carried the daughter-petitioner No.1 with them and since then she has been residing with them. The learned advocate further submitted that the decree of divorce has been granted in the petition filed by the respondent on the ground of desertion. The learned advocate, therefore, submitted that the petitioner No.1 is not at all entitled to get the maintenance. The learned advocate submitted that the learned Judge of the Family Court has not properly considered the evidence about the income of the respondent as well as the income of the petitioner No.1, while granting and quantifying the maintenance. The learned advocate submitted that now the

respondent has retired from service and, therefore, the maintenance quantified by the learned Judge is excessive, unreasonable and exorbitant. The learned advocate further submitted that the petitioner No.2 is not the daughter of the respondent and, therefore, she is not entitled to get the maintenance. In the alternative, the learned advocate submitted that as far as the petitioner No.2 is concerned, this Court may pass an appropriate order, however, the petitioner No.1 is not at all entitled to get the maintenance.

11] The learned advocate for the petitioners submitted that the petitioner No.1 is a divorcee. She has not remarried after the decree of divorce granted in the petition filed by the respondent. The learned advocate, therefore, submitted that being a divorcee, she is entitled to get the maintenance from the respondent until she remarries. The learned advocate further submitted that the contention raised by the respondent by relying upon Section 125 sub-section 4 of the Cr.PC, is not at all tenable, because after the decree of divorce in the petition filed by the respondent, the possibility of establishing the cohabitation between the petitioner No.1 and the respondent is now a far-fetched thing. The learned

advocate submitted that, therefore, this defence is not available to the respondent. The learned advocate further submitted that though the respondent has pleaded in his reply that the petitioner No.2 is not his daughter, but in the course of the cross-examination he has conceded that the petitioner No.2 is his daughter. The learned advocate submitted that the petitioner No.1 has not suppressed the fact of her employment and her salary. The learned advocate submitted that her income from the salary is meager and, therefore, not sufficient to satisfy bare minimum needs of the petitioner No.1 and the petitioner No.2. The learned advocate submitted that on the basis of the evidence and particularly in the teeth of the monthly salary of the respondent, the quantum of the maintenance awarded by the learned Judge is just, proper and reasonable. The learned advocate submitted that the respondent cannot expect the petitioners to lead the life of destitute and in vagrancy. The learned advocate submitted that the respondent is under an obligation to provide sufficient maintenance to the petitioners so that they can lead the life with the standard and status of the respondent. The learned advocate in short submitted that the order passed by the learned Judge of the Family Court is well reasoned and as such does not warrant interference.

12] In order to appreciate the rival submissions, I have gone through the record and proceedings and particularly the evidence of the parties. The marriage between the petitioner No.1 and the respondent is not in dispute. The petitioner No.1 is now a divorcee of the respondent. The respondent though denied the paternity of the petitioner No.2, has conceded the same during the course of his evidence. In his cross examination, he was constrained to admit the paternity of the petitioner No.2. It is further pertinent to note that the defence of refusal on the part of the petitioner No.1 to cohabit with the respondent despite repeated efforts made by him is not available or rather after divorce has become redundant. The decree of divorce has been passed on the ground of desertion. The Hon'ble Apex Court in the case of *Rohtas Singh Vs. Smt. Ramendri* [2000 Cri.LJ 1498 (SC)] has held that a divorced women can claim maintenance under Section 125 of the Cr.PC even though the decree of divorce has been granted on the ground of desertion. It is held that after decree of divorce, the plea of desertion by wife cannot be treated to be an effective plea and defence in support of her husband's refusal to pay the maintenance. It is to be noted that, therefore, the primary contention of the respondent that in view of the provisions of Section 125 sub-section 4, the petitioner No.1 is not entitled to get

the maintenance, is without substance. The learned Judge of the Family Court has considered number of decisions, wherein it has been held that a divorced woman is entitled to get the benefits of maintenance allowance and dissolution of marriage does not make any difference in the applicability of Section 125 of the Cr.PC. The decisions are in the cases of *Baj Tahira Vs. Ali Hussain Fissalli Chotnia* [AIR 1979 SC 362] ; *Rohtas Singh (supra)* and *C.G. Gawade Vs. Sulochana Gawade* [1997 Cri.LJ 520 (Bom)].

13] In the case of *Smt. Vanmala Vs. Shri H.M. Ranghath Batta* [1995 (2) SCC 299], it is held that when a woman was divorced by her husband or a decree of divorce has been passed, the defence provided under Section 125(4) of the Cr.PC would not be available to the husband.

14] In view of the above, it has to be held that the petitioner No.1 being the divorcee of the respondent is entitled to get the maintenance. The evidence adduced by the parties on this point, therefore, has become insignificant. The issue whether the petitioner No.1 failed to join his company or not despite a sincere effort made by him and also the allegation of the petitioner No.1

that without any reasonable cause or reason the respondent had withdrawn from her company, has now lost its shine. It has become redundant.

15] The next important question that needs to be addressed is the entitlement of the petitioners to get the maintenance and the quantum of maintenance. According to the respondent, the petitioner No.1 is doing service. She is getting handsome salary and, therefore, she has sufficient means to maintain herself. It is his case that his wife, son and his parents are dependent on him. It is further his case that his son is suffering from heart ailment. He is required to spend huge amount for the medical treatment of his son. It is further his case in this revision application that during the pendency of the revision application, he has retired from service and, therefore, the said fact is required to be taken into consideration. The parties have adduced the evidence to substantiate the rival contentions.

16] The petitioner No.1, with the petitioner No.2 has taken shelter at the house of her parents at Nagpur. The petitioner No.1 is a divorcee. She has not remarried. The petitioner Nos.1 and 2 in

the matter of shelter are at the mercy of the father of the petitioner No.1. The respondent has not made any provision for their separate residence. The petitioners are claiming maintenance to satisfy their day-to-day requirements. The parties are well qualified. The petitioner No.1 is B.Sc., B.Ed. In her evidence, she has stated that she is working as a Teacher on temporary basis and drawing salary of Rs.5,000/- per month. It is her case that the amount of Rs.5,000/- per month is not sufficient to maintain herself and her daughter befitting the status and living standard they are accustomed to. The respondent at the time of his evidence was working as a Superintending Engineer. The respondent was holding a Class-I post. Except denial in the cross-examination of the petitioner No.1 about her monthly salary, no other evidence has been placed on record to come to a conclusion that monthly salary of the petitioner No.1 is more than Rs.5,000/-.

17] The salary slip of the respondent for the relevant period is at Exh.71. Perusal of this salary slip would show that his gross monthly salary was Rs.1,20,000/- per month. It is, therefore, apparent that the monthly salary of the respondent was more than Rs.1,00,000/-. The respondent has placed on record the statement

of his liability and the monthly deductions made towards those liability from his salary. The learned Judge of the Family Court has taken this aspect into consideration. The learned Judge has rejected this contention on the ground that the deductions were excessive and non-compulsory. The learned Judge found that only the reasonable and compulsory deductions have to be taken into consideration. I do not see any reason to disagree with this view taken by the learned Judge. In this case, therefore, there is evidence that the monthly salary of the respondent was more than Rs.1,00,000/-. The petitioner No.1 being a divorcee is entitled to claim the maintenance from the respondent provided that there is evidence to show that she is unable to maintain herself. In view of her statement, it has to be held that the petitioner Nos.1 and 2 have no sufficient means to maintain themselves. The salary of the petitioner No.1 by no stretch of imagination could be said to be sufficient to satisfy their bare minimum needs.

18] The petitioner No.2 is born and brought up at the house of her grandfather. She was born on 12th February, 1999. The petitioner No.1 looked after the petitioner No.2 from her birth till date in all respects. The expenses incurred as well as required to be incurred for her education and other education related activities

have been specifically stated by the petitioner No.1. It needs to be stated that initially apart from raising doubts about the character and fidelity of the petitioner No.1, the respondent denied the paternity of the petitioner No.2. The evidence adduced on record is sufficient to prove that prior to 20th June, 1998, the petitioner No.1 had conceived. There is no dispute about the cohabitation between the petitioner No.1 and the respondent till 20th June, 1998. It is seen on perusal of the evidence of the parties that after birth of the petitioner No.2, the respondent had visited the petitioner No.1. In his evidence, the respondent has admitted that the petitioner No.2 is his daughter. Even otherwise the undisputed and admitted facts clearly indicate that the petitioner No.1 had conceived prior to leaving the house of the respondent on 20th June, 1998.

19] As far as the petitioner No.2 is concerned, after her birth till date she has no pleasure of the company of her father. The dispute between the father and mother has made her to lead such a life. The petitioner No.1 being a mother has played her role. The respondent tried his level best to deny the paternity of the petitioner No.2, however, during the course of the cross-examination good sense and wisdom prevailed upon him and

which led him to concede that the petitioner No.2 is his daughter. The respondent on account of his dispute with the petitioner No.1 has gone to the extent of disowning the paternity of petitioner No.2. He has denied his liability to pay the maintenance to the petitioner No.2. The petitioner No.2 in the fact situation has been made to face this unfortunate situation due to the quarrel between her parents. Ultimately, the learned Judge found that the evidence is sufficient to establish the respondent as father of the petitioner No.2. The respondent is, therefore, held liable to pay the maintenance. Similarly, the learned Judge found that the petitioner No.1 is also entitled to get the maintenance from the respondent. On consideration of the material placed on record, I am of the view that the learned Judge has not committed any mistake or error on this count.

20] The next important question is with regard to the quantum of maintenance. The learned Judge keeping in mind the pendency of the petition since 2005, has awarded the maintenance at the rate of Rs.3,000/- per month to the petitioner No.1 and Rs.1,500/- per month to the petitioner No.2 from the date of petition till December, 2007. The learned Judge has further

awarded the maintenance at the rate of Rs.4,000/- per month to the petitioner No.1 and Rs.2,000/- per month to the petitioner No.2 from January, 2008 till the date of the order i.e. 11th April, 2012 and thereafter at the rate of Rs.10,000/- per month each to the petitioners from the date of the order.

21] It is to be noted that while quantifying the maintenance, the approach of the learned Judge has been found to be most reasonable and proper. The petitioner No.1 is B.Sc., B.Ed. She is from well educated family. Her father was a Principal of reputed college in Nagpur. The respondent on the date of the marriage was an Executive Engineer. On the date of his evidence, he was holding the post of Superintending Engineer. His salary at the relevant time was more than Rs.1,00,000/- per month. By applying any standard, it has to be held that the parties are well qualified and from the highest strata of the society. The parties are, therefore, obviously accustomed to a standard lifestyle. The wife cannot be denied the maintenance sufficient to maintain herself by maintaining the standard of living she is accustomed to, while staying in the company of the respondent. The wife has a right to lead a standard life and that too befitting the status and position of the husband.

The Court is required to keep all these aspects in mind, while quantifying the maintenance.

22] The petitioners are getting maintenance at the rate of Rs.10,000/- per month each. It is submitted that the respondent has retired. It is to be noted that except this bare statement across the bar, no material has been placed on record to show his monthly pension. Similarly, no material or affidavit has been placed on record with regard to the receipt of the lumpsum retiral benefits. In the absence of such evidence, the statement of the fact that the respondent has retired from service will not carry any weight. It is further pertinent to note that considering the position in service of the respondent at the time of his retirement, he must be getting handsome pension. It has further come on record that his father is a pensioner. His parents are, therefore, not dependent on the respondent. The respondent is required to maintain his wife and his son. The respondent has to take care of the well-being of the petitioners as well. Therefore, the maintenance quantified by the learned Judge, in my view, cannot be said to be unjust, improper and unreasonable.

23] It is to be noted that considering the inflation rate and the standard of living to which the petitioners are accustomed to, in my view, the maintenance awarded by the learned Judge may not be sufficient to lead a luxurious life. By applying any standard, it may satisfy bare minimum needs of the petitioner No.1 and the petitioner No.2. As such, no interference is warranted in the well reasoned order passed by the learned Judge of the Family Court. The submissions of the respondent, therefore, cannot be accepted. The revision application is, therefore, **dismissed**. Rule stands discharged.

(G. A. SANAP, J.)

Vijay