



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

CRIMINAL REVISION APPLICATION NO. 70 OF 2024

Yasmin Begum W/o Mirza Imran Ali Baig
Age: 27 years, Occu.: Household,
R/o. C/o. Shaikh Umer s/o Shaikh Yakub,
Vazirabad Plot, Parbhani,
Tq. and Dist.Parbhani.

..Applicant

Versus

Mirza Imran Ali Baig S/o Mirza Nizam Ali Baig
Age: 29 years, Occu.: Fashion Designing,
R/o. Near Mulla Masjid, Mali Base, Parbhani,
Tq. and Dist.Parbhani.

..Respondent

...

Advocate for Applicant : Mr. Ashok Prakashrao Gaikwad
Advocate for Respondent : Mr.Gaurav L. Deshpande

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 25 NOVEMBER, 2024

PRONOUNCED ON : 28 NOVEMBER, 2024

ORDER :

1. Instant revision arises out of order passed by the learned Judge, Family Court, Parbhani in Petition-E No.227 of 2020 dated 27-09-2023 filed for maintenance.

2. Learned Counsel for the applicant submits that parties are husband and wife. That because of mal-treatment and demand by

respondent - husband, revision petitioner - wife was constrained to leave his company. She had no source of income and therefore, she moved learned Family Court, seeking maintenance by invoking Section 125 of the Code of Criminal Procedure (Cr.P.C.). However, learned Judge, Family Court by order dated 27-09-2023 dismissed her petition. Learned Counsel submitted that sole ground for dismissal of petition was admission by revision petitioner in cross-examination that she left the company of husband on her own, however, her subsequent version that she again came back to reside and was interested in cohabiting has not been considered by the learned trial Court. That there was even no notice to come to cohabit. That she had no means and was constrained to leave husband due to mal-treatment and as she had no source of income, she was entitled to receive maintenance, but learned Judge, Family Court failed to consider and appreciate the same, and hence, according to him, the impugned order is erroneous.

In support of his contention, learned Counsel has placed on record order dated 09-02-2023 passed by this Court in Criminal Revision Application No.268 of 2022 and order dated 31-07-2023 passed by the Hon'ble Karnataka High Court in Revision Petition Family Court No.100033 of 2020.

3. On the other hand, learned Counsel for respondent pointed out that, it is fairly settled position that wife is entitle for maintenance only if there is neglect to maintain, secondly, she has no sufficient source and thirdly, she must not have separated from husband on her own accord. He further pointed out that when without sufficient cause, wife abandons company of husband, then she is not entitled for maintenance and in view of such law, he submits that here in case in hand, revision petitioner wife, in her evidence while facing cross-examination, has admitted that she left the company of husband on her own accord without sufficient cause and therefore, in view of settled legal position learned trial Court gave a reasoned order that wife having left husband without just and sufficient cause, was not entitled for maintenance. According to him, notice was despatched to wife calling upon her to come and cohabit, but she did not respond to the same. According to him, there is no merit in the revision and thus, prays to dismiss the same.

4. After considering the submissions advanced by both the sides and on going through the papers, it transpires that parties are husband and wife. Present revisionist wife instituted proceedings bearing Petition – E No.227 of 2020 under Section 125 of the Cr.P.C.

before the Family Court, Parbhani, who permitted both sides to set up their case and on hearing both the sides, formulated necessary points and finally by order dated 27-09-2023, dismissed the petition.

5. Perused the impugned order, more particularly paragraph 11 of the impugned order wherein learned Family Court has dealt with the provisions under Section 125(4) of the Cr.P.C. and essentials for granting maintenance. Taking into account Section 125(4) of the Cr.P.C., learned trial Court considered the cross-examination of wife wherein she has admitted that on her own wish and volition, she stayed at her parents place. Subsequently, when she was called upon before Dar-ul-kaza to state whether she was willing to cohabit, she denied alleging affair between husband and his sister-in-law. But such pleadings were not appearing in her petition for maintenance before the Family Court and there were mere allegations of other nature.

Hence, when wife, without sufficient cause abandons the company of husband, law dis-entitles her from seeking maintenance. Here she has admitted in cross-examination that on her own will, wish and violation, she has herself left the company of husband. Though in cross-examination she made statement, to which attention

of this Court is invited, she did answer that subsequently she went, but instances are not demonstrated and inspite of claiming to be beaten for three hours, no complaint has been lodged by her at that point of time. Exactly when she went is also not stated by her.

Therefore, taking the entire tenor of the evidence of the revision petitioner - wife before the learned Family Court, this court does not see any error on the part of the learned trial Court in refusing maintenance. As no case is made out on merits, revision deserves to be dismissed. Accordingly, I proceed to pass following order :

ORDER

Criminal Revision Application No.70 of 2024 is dismissed.

(ABHAY S. WAGHWASE)
JUDGE