



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

112 CRIMINAL REVISION APPLICATION NO. 259 OF 2005

SANTOSH MADAN KESAPURE

VERSUS

JAISHREE SANTOSH KESAPURE AND ANR

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Advocate for Applicant : Mr. Solshe Vinesh C.
APP for Respondent/s-State : Mr. S. D. Ghayal.

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CORAM : S. G. MEHARE, J.

DATE : 29.07.2024

PER COURT :-

1. Heard the learned counsel for the applicant and learned APP for the respondent/State. None present for the respondents.
2. The petitioner/husband has impugned the order of the learned Principal Judge, Family Court, Aurangabad passed under Section 125 of the Cr.P.C. in petition No.E-50 of 2005, dated 13.07.2005.
3. The bone contention of the applicant is that the decree for restitution of conjugal rights was opened against the wife/respondent. It was also put to the execution but she did not cohabit with him. Hence, it could not be said that the applicant has refused and neglected to maintain her. He would submit that the learned Judge, Family Court did not appreciate

the evidence correctly and without any basis. Therefore, the impugned order is illegal and warrants interference at the instance of this Court.

4. Perused the impugned judgment and order. The applicant has a case that the respondent/wife herself left his company. Her parents took her for few days and thereafter, she did not return. However, the story of the restitution of conjugal rights has been brought before the Court without pleading. Learned Judge, Family Court has specifically observed that no such pleading appears to be made in written statement Exh.6. On the contrary, the applicant claimed his visits to wife. However, it is alleged that the relatives of the wife assaulted him, which prima facie suggest a substantial force in the claim of the wife that during that period, she was cohabiting with him and by taking disadvantage of absence, the respondent/petitioner secured ex-parte decree of the restitution of conjugal rights against her. The wife has claimed that in 2004, she was cohabiting with the applicant.

5. The wife has also the case that she was deserted since she was sent for her first delivery. The applicant/husband never provided a single penny to her and child. The

respondent/wife had an explanation that since she was deserted without any reason, she is entitled to maintenance.

6. It seems that learned Principal Judge, Family Court has correct in appreciating that the evidence without pleading is no evidence in the eye of law. Therefore, the story of restitution of conjugal rights would not be considered. In the absence of that story, the applicant/husband has no evidence to show that he did not refuse and neglect to maintain the respondents.

7. The findings recorded by the learned Judge, Family Court appears correct and proper and in consonance with the material produced before it. Appreciating the evidence, the learned Judge, Family Court, Aurangabad has passed the legal and correct order. The applicant has no ground to seek the interference in the impugned judgment and order.

8. The criminal revision application is devoid of merits. Hence, stands dismissed.

9. No order as to costs.

10. R and P be returned to the Family Court, Aurangabad.

(S. G. MEHARE, J.)

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vmk/-