



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 335 OF 2023

1. Pooja Kapil Jaiswal,
Age: 28 Years, Occ. Household,
2. Laksh Kapil Jaiswal,
Age: 04 Years, Occ. Nil,
(Applicant No.1 for herself and on
behalf of applicant no.2 being mother
of minor.)

Both R/o. C/o. Dilip Poonamchand Jaiswal,
Sadguru Apartment, Dhakewadi, Jalgaon,
Taluka and District Jalgaon.

... Applicants.

Versus

Kapil Madanlal Jaiswal,
Age: 28 Years, Occ. Business,
R/o. Rajendranagar, Yashoda Sadan,
Kinwad, District Nanded.

... Respondents

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Mr. Harshal P. Randhir, Advocate for the Applicants.
Mr. Vishal A. Bagadiya, Advocate for the Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 16.01.2025

Pronounced on : 22.01.2025

ORDER :

1. In instant revision, revisionist wife assails judgment and order dated 18.10.2021 passed by learned Judge, Family Court, Jalgaon in Petition No. E-225/2019 rejecting prayers for grant of maintenance by invoking Section 125 of Cr.P.C.

2. Learned counsel for revisionist wife pointed out that parties got married in 2016 and they have a son. Because of maltreatment, harassment and cruelty coupled with dowry demand, revisionist was constrained and compelled to leave company of respondent husband. That, in spite of sufficient income, he failed to provide for maintenance of herself as well as their son and therefore she was compelled to seek maintenance. Learned counsel pointed out that she did succeed in making out a case for entitlement of maintenance as there was neglect in spite of sufficient means, and even learned trial court, in its judgment, has recorded finding to that extent in affirmative, i.e. her entitlement to seek maintenance being neglected. However, it is pointed out that, in spite of such positive finding, application is rejected holding that she is receiving sufficient income from previous proceedings. Learned counsel emphasized that, it is fairly settled that wife is entitled to set up claim for maintenance under Section 125 of Cr.P.C., Protection of Women from Domestic Violence Act, 2005 [Domestic Violence Act] and other legislation meant to protect/provide shelter and means, to prevent vagrancy. That, in spite of law to this extent being clear and even there is recent judgment of *Rajnesh v. Neha and another* (2021) 2 SCC 324, by

misinterpreting the same, maintenance application has been rejected. That, in fact, wife can seek maintenance even if in previous proceedings she is receiving some quantum. According to learned counsel, there is no bar from seeking maintenance and as such, he takes exception to the observations and judgment impugned herein.

3. On the contrary, learned counsel for respondent husband pointed out that wife is already receiving maintenance. He pointed out that she has in fact left his company without sufficient cause and has insisted for separate residence from parents-in-law. Learned counsel pointed out that in fact, present revision proceedings itself are not maintainable and if at all wife has to seek any modification, then she has to approach the same court in which, by virtue of earlier order, she is beneficiary of some quantum. Thus, he questions the very maintainability of instant revision also.

4. Here, parties are married couple and they have a son. After hearing the arguments and on going through the papers including the impugned judgment, it emerges that due to matrimonial discord and volley of allegations against each other, parties have separated. Revisionist wife has set up claim under Section 125 of Cr.P.C. and has sought maintenance. On going through the judgment, it does appear

that learned trial court, after appreciating the available evidence before it, in para 20 observed that there is neglect to maintain and that wife is entitled to receive maintenance, and answered the point in affirmative. However, subsequently learned trial court has entered into the factual background of the case and has held that wife is already receiving maintenance of Rs.3,000/- for herself and Rs.2,000/- for son along with Rs.1,000/- towards rent in proceedings under Domestic Violence Act bearing PWDVA No. 110 of 2018. Learned counsel for revisionist wife does not dispute about such previous proceedings being instituted by her and about she and son receiving above amounts.

5. Both learned counsel have sought reliance on judgment of Hon'ble Apex Court in the ruling of ***Rajnesh*** (supra) which is instructive judgment dealing various aspects like, entitlement of maintenance, various legislation and statutes which enable wife to seek monetary relief under various heads. The judgment also deals with situation when there is overlapping of proceedings that arise on account of various forums being approached by a separated wife. Paragraph 60 of above judgment as well as order of this Court at Bombay in ***Vishal s/o Rajesaheb Gore v. Sou. Aparna w/o Vishal Gore*** [Criminal Revision Application No. 203 of 2017 decided on

13.06.2018] are also borrowed, quoted and relied by the learned Family Court, finally refusing quantum as claimed. On carefully going through the reasoning which comments on such point from para 21 onwards, it is clear that learned trial court has taken recourse to settled legal position and has finally held that revisionist is already beneficiary of maintenance order in her own proceedings. Above rulings are loud and clear that, though wife is entitled to invoke multiple forums, if at all she is beneficiary in any one of them, then the same has to be taken into account in other proceedings, if initiated for same purpose. Precedent bars various claims being set up simultaneously. Precisely such situation having noticed in the available case, learned trial court has rejected the application, of which no fault can be found at.

6. Another feature of the case is that, as pointed out in the very judgment referred above, it has been held that if any modification is necessary and sought, then it has to be before the same forum before which proceedings were instituted and order has been obtained. Apparently, such court was the same court which dealt proceedings bearing PWDVA No. 110 of 2018. Exploration of fresh maintenance claim before Family Court thus being not maintainable, even this Court holds that present revision is not maintainable for above

reasons. For both above reasons, revisionist fails. Hence, I proceed to pass the following order :

ORDER

The Criminal Revision Application is dismissed.

[ABHAY S. WAGHWASE, J.]

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