



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1158 OF 2020

Amol s/o Vitthal Bhaskar,
Age; 42 years, Occ; Nil,
R/o ; Bhaskar Vasti, Yesgaon,
Post; Khirdi Ganesh, Tq. Kopargaon,
Dist. Ahmednagar.

...PETITIONER

VERSUS

Swapnali d/o Gulab Girme,
(Swapnali w/o Amol Bhaskar),
Age; 37 years, Occ; Nil,
R/o; Girme Vasti, Takli Phata,
Yesgaon Shivar, Tq. Kopargaon,
District Ahmednagar.

...RESPONDENT.

...
Advocate for the Petitioner : Mr. Rahul Pralhadrao Mote
Advocate for Respondent : Mr. Nitin N. Bhagwat h/f Ms. Budhalkar
Supriya Gangadhar
...

CORAM : SUSHIL M. GHODESWAR, J.

DATE : 17.11.2025

PER COURT :

1. The petitioner/ husband is challenging the impugned order dated 19.03.2020, passed in Criminal Revision Application No. 27 of 2017, by learned Additional Sessions Judge Kopargaon, District Ahmednagar whereby, the said Revision Application allowed and the judgment and order dated 08.06.2017 passed by learned Judicial

Magistrate First Class, Kopergaon, in Criminal Misc. Application No. 318 of 2013 is set aside. Learned Additional Sessions Judge vide impugned order dated 19.03.2020 was further pleased to allow Criminal Misc. Application No.318/2013 and the petitioner/ husband is directed to pay to the respondent/ wife the maintenance allowance of Rs.5000/- per month from the date of the application i.e. 05.10.2013.

2. The said Criminal Misc. Application No. 318 of 2013 was filed by the respondent Sau. Swapnali d/o Gulab Girme @ (Swapnali w/o Amol Bhaskar) under Section 125 of the Code of Criminal Procedure. The said Cri. Misc. Application No. 318/2013 was rejected by the learned 2nd Judicial Magistrate First Class, Kopergaon vide order dated 08.06.2017.

3. The marriage between the petitioner and the respondent was solemnized on 23.02.2011 at Kopergaon. At that time the petitioner was working in U.S.A. and after the marriage, the respondent/wife did not go to U.S.A. along with the petitioner initially because the respondent was not holding Passport. After completing all formalities of Passport and VISA, the petitioner took the respondent to U.S.A. Thereafter, on 07.02.2013 the petitioner and respondent returned to India. Since the respondent was not again interested to go back to U.S.A. (America), therefore, the disputes arose between them and that resulted into filing of various matrimonial cases by the respondent. It is further alleged that the petitioner had filed a divorce petition i.e. H.M.P. bearing No. 42 of

2015, which came to be allowed by the learned Civil Judge, Senior Division, Kopargaon, thereby declaring the marriage between the petitioner and respondent as dissolved by passing a decree of divorce dated 30.09.2019.

4. According to the petitioner, the respondent has filed Criminal M.A.No. 642 of 2015 under Section 23 of the Protection of Women from the Domestic Violence Act, 2005 and sought maintenance against the petitioner of Rs. 35,000/- p.m.. However, the learned J.M.F.C.-2, Kopargaon vide order dated 18.03.2016, directed the petitioner to pay monthly interim maintenance amount of Rs. 5,000/- p.m. to the respondent. The said amount of Rs. 5,000/- is being paid regularly by the petitioner. However, the respondent again filed the instant Criminal M.A. No. 318 of 2013 under Section 125 of the Cr.P.C. before the J.M.F.C., Kopargaon. The learned J.M.F.C., Kopargaon vide order dated 08.06.2017 rightly rejected the said application for grant of maintenance.

5. The respondent has challenged the said judgment and order dated 08.06.2017 before the Additional Sessions Judge, in Criminal Revision No. 27 of 2017. The learned Sessions Judge vide the impugned order dated 19.03.2020 allowed the said revision and directed the present petitioner to pay Rs. 5,000/- p.m. to the respondent from the date of application i.e. 05.10.2013.

6. According to learned advocate for the petitioner, due to aforesaid litigation he was required to leave the job and as such now he is job less. He further submits that it is the respondent who has deserted him and who has created all this menace. He further submits that at the time of recording of evidence, the respondent has stated that she was staying along with her parents and her economic position is sound. She further submitted that she is not at all depending upon the maintenance amount being paid by the petitioner. Learned Counsel for the petitioner submits that the order passed by the learned J.M.F.C. Kopargaon, thereby rejecting the application under Section 125 of the Cr.P.C. was correct and proper and it was not appropriate on the part of the learned Additional Sessions Court to interfere with the said finding. He further submits that the petitioner is already directed to pay Rs. 5000/- per month to the Respondent in Domestic Violence proceedings vide order dtd. 18.03.2016. This fact was not taken into consideration by the Learned Session Judge while passing the impugned order dtd. 19.03.2020. Therefore, the impugned order according to him is not only illegal but excessive too.

7. *Per-Contra*, Mr.Nitin N. Bhagwat h/f Ms. Budhalkar Supriya Gangadhar, learned Advocate for the respondent submits that the respondent who suffered the decree of divorce on the ground that she herself has deserted from her husband, will be entitled to the maintenance under Section 125 of the Cr.P.C.. According to learned

advocate, the respondent has attended the status of divorced wife and she has not re-married again. The definition of the wife in Explanation - (B) to the Section 125 (1) of Cr.P.C. also includes a divorced wife. It is the fact that the respondent wife is not in any employment and in this situation, she is having a right to be maintained herself from the petitioner/husband. The learned Counsel for the respondent has relied on the judgment delivered by the Hon'ble Apex Court in **Rina Kumari @ Rina Devi @Reena Dinesh Kumar Mahto @ Dinesh Kumar Mahato and another – 2025 LJSoft (SC) 42** in support of his submissions.

8. Taking into consideration the vehement submissions of learned advocates for the respective sides and after perusing the impugned orders, it is apparent that the learned Sessions Court did not consider the earning capacity of the petitioner while passing the impugned order. In cross-examination of the respondent/ wife, she admitted that she is living with parents, her economic condition is sound and, therefore, she is able to maintain herself. There is also non consideration of the fact that the petitioner is already paying Rs. 5000/- per month to the respondent as per order dtd. 18.03.2016 in Domestic Violence proceedings. There is also no consideration as regards the evidence deposed by the respondent in the Trial Court which formed the basis for rejection of Section 125 proceedings by the Learned JMFC, Kopargaoon in Cri. Misc. Application No. 318/2013. All these issues were required to be considered by the learned Sessions Court in Criminal

Revision No. 27/2017. So also, the landmark judgment of the Honourable Supreme Court on the issue of granting maintenance, in ***Rajnesh vs. Neha reported in (2021) 2 SCC 324***, was not brought to the notice of the learned Sessions Court. In ***Rajnesh vs. Neha (supra)***, the Honourable Supreme Court framed the guidelines for granting maintenance and it observed that there is no straitjacket formula for fixing maintenance. It outlined comprehensive factors to be considered, including the status of the parties, the reasonable needs of the claimant, the income and property of both parties, the number of dependents, the standard of living, and other circumstances. When maintenance is claimed under different statutes, the court shall consider adjustments/set-off of amounts previously awarded. The Honourable Supreme Court emphasized that the objective is not to punish the spouse but to ensure that the dependent is not reduced to destitution.

9. It is well-settled that a Revisional Court, while exercising jurisdiction under Sections 397 and 399 of the Cr.P.C., is required to examine the legality, propriety and correctness of the findings of the Trial Court, and such jurisdiction must be exercised with due regard to the evidence on record and the governing legal principles. The Hon'ble Supreme Court in ***Amit Kapoor vs. Ramesh Chander (2012) 9 SCC 460*** and ***State of Rajasthan vs. Fatehkaran Mehdu (2017) 3 SCC 198*** has held that revisional powers cannot be exercised in a mechanical manner and that the Revisional Court must record proper reasoning reflecting

application of mind to the relevant factors. In the present case, the Revisional Court reversed the well-reasoned findings of the learned JMFC without adverting to material admissions in cross-examination, without considering the petitioner's existing liability to pay maintenance under the D.V. Act, and without applying the mandatory parameters laid down in *Rajnesh vs. Neha* (supra). The failure to consider these vital aspects renders the impugned order legally unsustainable. Hence, in the interest of justice and to ensure a decision based on proper appreciation of evidence and applicable law, remand of the matter to the Revisional Court for fresh adjudication is warranted. Therefore, in my considered view, for all these reasons, the matter needs to be reconsidered by the revisional court again. Hence, I pass the following order:-

ORDER

- (i) The Writ Petition is partly allowed.
- (ii) The impugned order dated 19.03.2020 is quashed and set aside and the matter is remanded back to the Revisional Court i.e. Additional Sessions Judge, Kopergaon for its fresh decision on merits in view of the issues raised by this Court in paragraph Nos.8 and 9 of this order.
- (iii) The interim order dtd. 07.04.2021 passed by this Court to be continued till the disposal of the Revision Petition.

(SUSHIL M. GHODESWAR, J.)