



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

909 CRIMINAL WRIT PETITION NO. 2042 OF 2024

Kadar Jamal Shaikh,
Age: 58 years, Occu: Agriculture,
R/o. Jambhali, Tq. Paithan,
Dist. Aurangabad

....PETITIONER

VERSUS

Nasibabi W/o Kadar Jamal,
Age: 52 years, Occu: Housework,
R/o. Shahaganj,
Tq. & Dist. Aurangabad

....RESPONDENT

....

Mr. Arun S. Shejwal, Advocate for the Petitioner
Mr. Pathan Sartaj Khan H., Advocate for the sole Respondent

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 20.02.2025

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. With consent of both the parties it is heard finally at the stage of admission.

2. By the present Petition, under Article 227 of the Constitution of India, the Petitioner takes exception to the orders dated 13.06.2024 passed below Exh.106, order dated 05.08.2024 passed below Exh.136 and order dated 29.11.2024 passed below

Exh.111 in Application No.E-81/2019 by the learned Principal Judge, Family Court, Aurangabad.

3. The present Petitioner is the original Non-applicant and the Respondent is the original Applicant in Petition No.E-81 of 2019. For the sake of brevity, I would like to refer parties to the present Petition in their original capacity as Applicant-wife and Non-Applicant-husband.

4. The Applicant-wife has filed Petition E-81 of 2019 and prayed for maintenance at the rate of Rs.10,000/- (Rupees Ten Thousand) per month. According to the Applicant-wife, she and Non-applicant-husband were married as per Muslim Customs and Rites approximately 36 to 37 years before the institution of the Petition. The matrimonial relations between them are still in existence. For the initial 2-3 months after marriage, she was well treated by the Non-applicant-Husband but subsequently, she was victim of domestic violence at the hands of her husband. From the matrimonial relationship, they have one female child. However, the Non-Applicant-husband solemnized second marriage and she was driven out of her matrimonial house. It is further alleged that, the Non-Applicant did not maintain her. The Non-Applicant is having

sufficient income, therefore, she is entitled for the maintenance of Rs.10,000/-. After service of notice, the Non-Applicant-husband appeared in the matter and denied claim of the applicant-wife.

5. The Applicant-wife filed assets and liability affidavit as law laid down by the Apex Court in ***Rajnish vs. Neha, AIR 2021 SC 569 : AIR ONLINE 2020 SC 915***. The Applicant-wife examined herself at Exh.17 and underwent cross-examination conducted on behalf of the Non-applicant-husband. The Applicant-wife examined PW-2 Shaikh Hamid Shaikh Abdul at Exh.93 and DW-3 being Shaikh Khalid Shaikh Mohimoddin. However, on 13.06.2024, the learned Principal Family Court proceeded with the matter without cross-examination on behalf of the Non-Applicant-husband as per order passed below Exh.106. Thereafter, the Non-Applicant-husband examined himself and DW-2, DW-3 and DW- 4.

6. On face of record it further appears that, on 13.06.2024, the Non-Applicant-husband filed Exh.106 an application for time to proceed evidence and to produce the P W. 3 cross-examination who had already been discharged. Again, on 11.07.2024, the Non-Applicant husband filed Exh.136 an application to call the owner of the Fair Price Shop as a witness to prove the Ration Card. On

05.08.2024, the learned Family Court rejected said application with cost.

7. The learned counsel for the Petitioner canvassed that, the impugned orders passed by the learned Family Court are illegal, perverse, bad in law and no proper opportunities were granted to the Non-applicant-husband to defend his cause. It is further canvassed that, the learned Family Court did not accommodate the Non-applicant for two days to cross-examine DW-3 and rejected the application. The Non-applicant-husband is ready and willing to examine seven witnesses but no proper opportunity has been granted, hence, prayed for quash and set aside impugned orders.

8. Per contra, the learned counsel for the Respondent-wife canvassed that, relations of husband and wife between the Applicant and Non-applicant are still in existence. There is no customary divorce or decree of divorce from the Competent Court. The Applicant specifically alleged about ill-treatment at the hands of Non-applicant. The Non-applicant-husband not maintaining the Applicant-wife, who has no source of income. Whereas the non-Applicant-husband having sufficient means and bodily able person. Therefore, it is the duty of the Non-applicant-husband to maintain the Applicant-wife.

9. In order to prove the quantum of maintenance and the existence of marital relations, the Applicant-wife examined witnesses PW-1 to 3. Thereafter, the Non-applicant examined his witnesses. Lastly, on 30.05.2024, the Non-applicant-husband examined Shaikh Khalid Shaikh at Exh.102. Thereafter, on 25.06.2024, the Non-applicant husband filed Exh.111 and prayed for permission to examine seven witnesses. On 29.11.2024, the learned Family Court passed the order holding that, matter is more than five years old and vide order dated 31.03.2024 passed by this Court (Coram: S. G. Mehare J.) in Criminal Revision Application (Stamp) No.445 of 2023, it is required to be decided in time frame.

10. On perusal of Orders passed below Exh.107, 114 and 136 it prima facie shows that, the Non-applicant-husband time and again sought time and trying to delay the trial. No doubt, the Non-applicant-husband examined DW-3 and after recording his examination-in-chief, the Applicant-wife through her counsel partly cross examined the PW-3 prior to recess but PW-3 was not made available. Therefore, on 13.06.2024 after recess, the learned Family Court passed an order below Exh.102 which reads as under:

“In view of order below Exh.106, the cross-examination of this witness (who remained absent today) is closed.”

11. On face of record it further appears that, on 13.06.2024, the Non-applicant filed application Exh.106 and sought for adjournment for two days to examine DW-3 after the order is passed below Exh.102 and closed cross-examination of DW-3. Since the cross examination of D.W. 3 was closed and the witness of the Non-applicant-husband was discharged, no prejudice would be caused to the Non-applicant-husband but right of the applicant-wife would be prejudiced. Therefore, no right accrued to the Non-applicant-husband to recall his defence witness for further cross-examination. Thereafter, again on 11.07.2024, the Non-applicant husband filed Exh.136 an application for seeking permission to examine Owner of Fair Price Shop to prove the ration card, which is not at all required. On 05.08.2024, the learned Family Court passed order below Exh.136 and rejected said application with cost but the Non-applicant failed to comply with order of cost. Thereafter, again on 25.06.2024, the Non-applicant has filed Exh.111 and shown his intention to examine seven witnesses. On 29.11.2024, the learned Family Court passed the order and rejected said Application with reasoned order.

12. Needless to say that, as per order dated 31.03.2023 passed by this Court in Revision Application (Stamp) No.445 of 2023,

the proceeding required to be decided within time frame, however, the Non-applicant-husband time and again sought time on one or other grounds. The Applicant wife is more than 55 years of age and this Court already directed the learned trial court to decide the same within stipulated period with clear understanding that no further time would be extended. In spite of said fact, the non-Applicant-husband did not cooperate and repeatedly filed various applications. Nonetheless, the Petitioner has not brought any circumstances to explain why he did not supply the list of witnesses soon after matter listed under caption of his evidence to disprove claim of the Applicant-wife. Therefore, I do not find any substance to interfere with impugned orders. In view of above discussion, the Criminal Writ Petition is dismissed. Rule is discharged.

[Y. G. KHOBRAGADE, J.]