



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL REVISION APPLICATION NO. 180 OF 2022

PETITIONER : Sumaiyya Parveen Sheikh Shafique,
Aged about 22 years, Occupation:
Household, R/o Lakshmi Nagar, Akot file,
Akola Tq. District Akola.

VERSUS

RESPONDENT : Sheikh Shafique Sheikh Gafur,
Aged about 29 years, Occupation: Service
(C.R.PF) (C.T. Carpenter), R/o Panchmori,
near Dargah, Akola. At present
c/o Bataliyan No.113, Gaon Dhanura,
District Gadchiroli.

Mr. M.N.Ali, counsel for the petitioner.
Ms. Nazia Pathan, counsel h/f Mr. S.V.Sirpurkar, counsel for
respondent.

CORAM : **URMILA JOSHI-PHALKE, J.**
DATE : **20/01/2025**

ORAL JUDGMENT :

1. Heard.
2. **Admit.**

3. Heard finally by consent of learned counsel appearing for the parties.

4. By this revision application, the petitioner/wife has challenged the order of rejection of application for grant of maintenance by the Family Court, Akola, by impugned judgment and order dated 27/04/2022.

5. The facts of the case show that the petitioner and the respondent are the husband and wife. Their marriage was solemnized on 10/02/2019 at Akola as per Muslim Rites and Customs. After marriage, she resumed cohabitation at the house of the respondent. It is alleged that due to the ill-treatment at the hands of the present respondent, she was constrained to leave the matrimonial house and took shelter at the house of her parents. Her husband is serving in CRPF and drawing a salary of Rs. 82,000/-. Despite being a salaried person, he has not made any arrangements for her maintenance, and therefore, she is constrained to file an application for grant of maintenance. It is further alleged that as the respondent insisted her for abort the child, but she was not willing to abort the child, and thereafter, the respondent had demanded Rs. 5 lakhs from her. It is further

alleged that the respondent has forcefully administered some pills to her, due to which her child was aborted, and the medical papers to that extent are filed on record.

6. The said application was strongly opposed by the respondent on the ground that without any sufficient cause, she has left his company and is staying along with her parents, and therefore, she is not entitled for any maintenance. It is further submitted that he is ready to cohabit with her, but she has not accepted the proposal of the present respondent of joining his company, and therefore, she is not entitled for any maintenance.

7. After recording the evidence of both sides, the learned Family Court rejected the application by observing that the entire application was filed on the ground that it was the present respondent who insisted her to abort the child and thereafter administered her some pills, due to which her child was aborted, but the said fact is not established by the wife by adducing evidence. Mere producing the documents on record is not sufficient to prove the said fact, and the sufficient and reasonable cause for living separately from her husband is not established, and therefore the application was rejected.

8. Heard learned counsel Mr. M.N. Ali for the petitioner, who submitted that the impugned judgment shows that the mere production of the document by the respondent is considered by the court, but the same rule of evidence is not made applicable to the present petitioner, and no opportunity was granted to her to adduce the evidence to establish that the medical report shows her child was aborted due to the administration of the said pills. He prays for remand of the matter by giving her the opportunity to adduce the evidence.

9. Learned counsel for the respondent submitted that the reasoning given in the impugned judgment sufficiently shows that after sufficient opportunity, the petitioner failed to adduce the evidence to support her contention, and thus, the sufficient and reasonable cause for staying apart from her husband is not established by her, and therefore, learned Family Court rightly rejected the application, and no interference is called for.

10. After hearing learned counsel for the petitioner and learned counsel for the respondent, perused the impugned judgment as far as the evidence on record. The entire allegation of the petitioner is that after marriage, she resumed the cohabitation

at the house of the present respondent. However, she was not treated well, and she was insisted for aborting her child, for which she was not ready. Therefore, the amount of Rs. 5 lakhs was demanded by the respondent from her parents. It is her specific case that the respondent has administered some pills and therefore, her child was aborted. She was admitted to the hospital and treated for the said reasons. She has produced medical papers on record, which are not considered. Admittedly, to establish the fact she has not examined the medical officer or the medical practitioner, who has treated her for the reason that the child was aborted as some pills were administered. The impugned judgment shows that as the petitioner has not established that she is residing separately from her husband, as the husband has administered her pill, and therefore her child was aborted. Thus, considering that though medical papers were there, but it was not proved by the applicant. Therefore, the maintenance was refused to her. Both parties have agreed that if the matter is remand back by giving the opportunity, they would cooperate with the court to dispose of the application at the earliest. In view of that, one opportunity is required to be granted to the present petitioner to establish her case before the Family Court. In view of that, it would be in the

interest of justice to remand back the application to the Family Court Akola for consideration of the medical evidence after giving him the opportunity to the petitioner to adduce the evidence in support of her contention. In view of that, I proceed to pass the following order.

- a] The criminal revision application is **allowed**.
- b] The Petition No. E-11/2020 filed by the applicant for grant of maintenance is remanded back to the Family Court, Akola.
- c] The parties to appear before the Family Court, Akola, on 04/02/2025.
- d] The applicant shall adduce her evidence before the Family Court, and the Family Court shall give an opportunity to the respondent to cross-examine the witness. The Family Court shall dispose of the application at the earliest within three months..

[URMILA JOSHI-PHALKE, J.]