



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

CRIMINAL REVISION APPLICATION NO. 133 OF 2024

Dattatraya S/o Bhaskar Rajgure,
Aged About 30 years, Occu
Agriculturist, R/o Village
Sagwan, Distt. Buldhana.

...Applicant

// VERSUS //

1. Meenakshi W/o Dattatraya
Rajgure, Aged About 26 years,
Occu : Household,
2. Rohit S/o DattatrayaRajgure,
Aged About 5 years, Occu : Nil,
Through Natural Guardian
Mother i.e non-applicant no.1.
Both R/o Ganesh Bapu Kshhsagar Sagwan,
District Buldhana
At present Soyagaon Soygaon,
Dist.Aurangabad

... Non-applicants

Shri Tejas Deshpande, Advocate for the applicant.
Shri D.V.Verma, Advocate h/f Shri V.S.Mishra, Advocate for the non-applicants.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 13th JANUARY, 2025.

ORAL JUDGMENT :

Heard. **Admit.**

2. The applicant being aggrieved by the impugned judgment dated 15th May, 2024 delivered by the learned Judge Family Court, Buldhana in petition no. E-04 of 2023 thereby awarding maintenance to

the non-applicant no.1 to the tune of Rs.10,000/- per month and to the non-applicant no.2 to the tune of Rs.6,000/- under the provision of Section 125 of the Code of Criminal Procedure, approached to this Court by filing this revision.

2. The facts of the present application are as under :

The non-applicant-wife is legally wedded wife of the applicant husband. According to the non-applicant-wife, she has married with the applicant husband on 11/02/2017. The matrimonial relationship is still in existence. Non-applicant no.2 is the son born out of the said wedlock. After the marriage the non-applicant resumed the cohabitation at the house of the present applicant. It is alleged that there was a cordial relation between them. She was ill-treated for the trivial reasons, causing bodily and mental distress by abusing her and speaking in filthy language. It is further alleged that even she was not treated with the respect in the family and ill-treated for the demand of money. When she was pregnant, the present applicant and his relatives forced her for the abortion but she gave birth to a child. She was driven out of the house. Therefore, she approached to the Family Court for grant of maintenance. The learned

Family Court has considered her evidence, however, the applicant could not adduce his evidence, therefore, in absence of his evidence, the matter was decided and maintenance was granted at the rate of Rs.10,000/- to the non-applicant no.1 and Rs.6,000/- to the non-applicant no.2.

3. The petitioner had challenged the said judgment and order of maintenance on the ground that opportunity of adducing the evidence is not granted to him. The learned Family Court has not considered the amount of maintenance granted to the present non-applicant no.1 in a Domestic Violence Petition No. 396 of 2022, wherein the Judicial Magistrate First Class has granted the maintenance at the rate of Rs.4000/-. The another ground raised by the petitioner is that there is no reasoning by the learned Family Court while granting maintenance at the rate of Rs.10,000/- by considering the income of the present applicant at the rate of Rs.60,000/- to Rs.70,000/-. For all aforesaid grounds, it is prayed that the petition be remanded back to the Family Court for giving an opportunity to the present applicant to adduce his evidence and for reconsideration of the quantum of maintenance amount by considering

that in a domestic violence proceedings, some amount is already granted to the present applicant towards the maintenance.

4. Heard Shri Tejas Deshpande, learned counsel for the applicant. He submitted that as far as the opportunity to the present applicant to adduce the evidence is concerned, is not granted. On 16th January, 2024, he was present before the Court and adduced his evidence to some extent. His cross-examination was carried out. However, on subsequent dates, though the present applicant was present nothing happened in the proceedings and only once dated 6th May, 2024 as the applicant was absent and the matter was proceeded ahead by fixing for the final submission and subsequently it was decided without giving an opportunity to the applicant to adduce the evidence. He further invited my attention towards the application and submitted that the non-applicant has suppressed the fact that she has filed the proceedings under the Protection of Domestic Violence Act, wherein the maintenance was granted to her at the rate of Rs.4000/-. First time, this fact brought to the notice of the Family Court by the present applicant but the same was not considered by the Family Court while fixing the quantum of

maintenance. He submitted that there is no reasoning also on what basis the Family Court comes to the conclusion that the monthly income of the present applicant is Rs.60,000/- to Rs.70,000/-. For all above these grounds, the matter requires to be remanded back to the Family Court for fresh consideration. In support of his contention, he placed reliance on the decision of the Hon'ble Apex Court in the case of **Rajnish Vs. Neha and another** reported in **(2021) 2 SCC 324** and submitted that in this judgment the Hon'ble Apex Court has specifically observed in paragraphs 60 and 61 that wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the D.V. Act and Section 125 of the Cr.P.C., or under Hindu Marriage Act. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account

the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.

5. He submitted that in view of the observations of the Hon'ble Apex Court, there is no consideration as to the maintenance order granted to the present non-applicant no.1 by the Judicial Magistrate First Class in a domestic violence proceeding or under the Protection of Women from Domestic Violence Act, 2005. He submitted that moreover, the non-applicant no.1 has not disclosed about the filing of the said petition before the Judicial Magistrate First Class by mentioning the same in the present application. For all above these grounds, the matter deserves to be remanded back.

6. However, the learned counsel for the non-applicants strongly opposed the said contention and submitted that after sufficient opportunity the applicant has not adduced the evidence and therefore no ground to remand the proceedings back to the Family Court. He further submitted that the Family Court has also considered the evidence on record and the documentary evidence and come to the conclusion that the applicant is getting Rs.60,000/- to Rs.70,000/- per month and

awarded the maintenance at the rate of Rs.10,000/- per month to the non-applicant no.1 and Rs.6,000/- to the non-applicant no.2. Thus, no ground is made out by the applicant to interfere with the same and to remand the matter back to the Family Court.

7. After hearing both the sides and on perusal of the impugned judgment as far as evidence on record is concerned, the applicant-wife Meenakshi has deposed by filing her evidence-in-chief as well as she placed reliance on the documents i.e. 7/12 extracts of the property of the brother of the present applicant. The 7/12 extract is in the name of other family members of the present applicant. Admittedly, the present applicant has filed his affidavit chief-examination before the Family Court. He is cross-examined to some extent and subsequently the matter was adjourned and thereafter rojnama which is at Annexure-E shows that on several occasions the applicant was present before the Court but as the Court was busy in another work, the matter was not proceeded. On 6th May, 2024, as the applicant was absent, the order was passed and the matter was proceeded without his evidence. Thus, rojnama clearly shows that the applicant has attended the proceedings on several occasions but

his cross-examination was not conducted for one or the other reasons. But only on 6th May, 2024, he was not present, therefore the order was passed and the matter was proceeded. As far as the mention of earlier proceedings is concerned, admittedly, the application is silent about the grant of maintenance to her at the rate of Rs.4000/- under the Domestic Violence Act. She has also not mentioned about the filing of the said application in her application. The judgment passed by the Family Court which is impugned here is also silent about the grant of maintenance under the Domestic Violence Act, though it refers the judgment of the *Rajnish Vs. Sneha* (supra) on which the applicant placed reliance on.

8. On perusal of the judgment of the Family Court, it reveals that Family Court has ascertained the income of the present applicant as Rs.60,000/- to Rs.70,000/- on what basis the guess work was done by the Family Court. No reason is assigned by the Family Court. Admittedly, the non-applicant has not adduced any evidence to show that the applicant is earning Rs.25,000/- by doing a private job. As far as the 7/12 extracts are concerned, in the judgment nowhere it reveals that in the said 7/12 extracts some land is also standing in the name of the present

applicant. It also shows that land is also standing in the other family member and the brother of the present applicant and in the name of wife of his brother. Thus, even assuming that the said lands were transferred, only to avoid to give maintenance amount to the present non-applicant then also Family Court has come to the conclusion that guess work is on the basis of the nature of the crops which were taken and the market price available in the said crops. But no such reasoning is given by the Family Court while granting the maintenance at the rate of Rs.10,000/- and Rs.6,000/- respectively.

9. Considering all these aspect and considering the guidelines issued by the Hon'ble Apex Court, in the case of *Rajnish Vs. Sneha* (supra), wherein it is held that it is well settled that a wife can make a claim for maintenance under different statutes and there is no bar to seek maintenance both under the D.V. Act and Section 125 of the Cr.P.C., or under Hindu Marriage Act. However, it would be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding,

she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.

10. In paragraph 61, the Hon'ble Apex Court has further observed that to overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the Court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the concerned court in the previous proceeding.

11. Considering the aspects that sufficient opportunity is not granted to the present applicant to adduce his evidence as well as there is

no consideration to the earlier maintenance order in the Domestic Violence proceedings as well as there is no reasoning while fixing the quantum of maintenance, the applicant has made out the case to remand back the matter to the Family Court, Buldhana. In view of that, I proceed to pass the following order.

- i. Criminal revision is allowed.
- ii. The petition no. E-04 of 2023 is remanded back to the Family Court, Buldhana at the stage of cross-examination of the applicant.
- iii. The judgment and order of maintenance granted by the Family Court, Buldhana vide order dated 13th January, 2025 is hereby quashed and set aside.
- iv. In the meantime, during the pendency of the proceeding before the Family Court, Buldhana, the applicant shall deposit Rs.1,50,000/- towards the arrears of the maintenance.
- v. The applicant shall also deposit the amount of Rs.6,000/- towards the maintenance of the non-applicant-wife and Rs.4,000/-

towards the maintenance of the non-applicant-son till disposal of the petition before the Family Court.

vi. Both party shall appear before the Family Court, Buldhana on **1st February, 2025.**

vii. The Family Court, Buldhana shall expedite the matter and disposed of at the earliest.

[URMILA JOSHI-PHALKE, J.]