



Judgment

375 revn31.23

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

CRIMINAL REVISION APPLICATION NO.31 OF 2023

Sau.Hemlata @ Vrushali Pravin
Darne, age 45 years,
occupation : household,
r/o c/o Shridhar Shaligram Mali,
Shriramkrupa, Gajananpeth, Lahan
Umari, Akola, taluka district Akola. **Applicant.**

:: VERSUS ::

Pravin Bhaurao Darne,
age 48 years, occupation service,
r/o Sukli, post Pardi, taluka Kalamb,
district Yavatmal. **Non-applicant.**

Shri Mandar Deshpande, Advocate h/f Shri H.M.Mohta,
Counsel for the Applicant.
Shri C.A.Babrekar, Counsel for the Non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 20/02/2025
PRONOUNCED ON : 17/03/2025

JUDGMENT

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1. The order passed by learned Judge, Family Court, Akola in E-Petition No.102/2017 rejecting the maintenance petition of the applicant dated 5.7.2022 is under challenge in the present revision application.

2. The applicant and non-applicant are legally wedded on 25.12.2015 as per the Hindu Rights and Religion. After marriage, the applicant resumed cohabitation at the house of the non-applicant. As per allegations in the application, it is demonstrated to her by family members of the non-applicant that the non-applicant is Lecturer and drawing handsome salary having his house and agricultural lands at Yavatmal and Sukli respectively. On resuming the cohabitation, it revealed to her that the non-applicant is having only one room to stay and the non-applicant also informed her that she has to stay at Sukli as he is unable to incur the expenses by staying at Yavatmal. She further alleged that the non-

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applicant has refused and neglected her by ignoring her and he was not returning home for 2-3 days. Though she made her grievance to the parents of the non-applicant, they have also not paid any heed towards it. It further revealed to her that one Manish Darne was shown to be nominee in the service record of the non-applicant from which it revealed to her that the non-applicant was already married and having a son from the said marriage. Thus, the non-applicant has concealed his previous marriage as well as his financial condition which constrained the applicant to leave the matrimonial house and, therefore, she is residing separately. It is further alleged that she was subjected for ill-treatment by the non-applicant and, therefore, she was constrained to file the petition for grant of maintenance.

3. The non-applicant denied all contentions of the applicant by filing his reply and contended that the

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applicant has resided with him for 10 months and during that period her behaviour was not proper. It is further contended that the applicant suspected by seeing the pass book and misunderstood that said Manish is the son of the non-applicant. In fact, it was the mistake committed by the concerned bank and the bank officer deposed in a matrimonial proceeding that mistakenly the said name is mentioned as nominee of the non-applicant and that mistake is corrected. Despite due efforts taken by the non-applicant, the applicant has not resumed cohabitation and without any sufficient reason, she has withdrawn herself from the company of the non-applicant and, therefore, the application deserves to be rejected.

4. After recording the evidence of both the sides, learned Judge of the Family Court held that the applicant failed to adduce the evidence to show that she was neglected and refused to maintain by the non-applicant

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and, therefore, she is not entitled for maintenance under Section 125 of the CrPC.

5. Heard learned counsel Shri Mandar Deshpande for the applicant and learned counsel Shri C.A.Babrekar for the non-applicant.

6. Learned counsel for the applicant submitted that after the marriage, the applicant resumed the cohabitation, however she was not treated well. The expression used in Section 125(4) of the Code is, refusal to live and not failure to live with the husband. There is some difference between "failure to live" and "refusal to live" with the husband. The wife is expected that if she does not do so, there is "failure" on her part to do so. If the facts of the present case are taken into consideration, there is a sufficient reason for the applicant not to live with her husband and, therefore, she is

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entitled for grant of maintenance. The Family Court has not considered the same and wrongly rejected the petition. In support of his contentions, he placed reliance on the decision in the case of **Kavungal Kooppakkattu Zeenath vs. Mundakkattu Sulfiker Ali, reported in 2008 SCC OnLine Kerala 78**. He further submitted that filing of the criminal complaint by the applicant sufficiently shows that she was ill-treated as well as her evidence shows that the non-applicant has concealed material aspects from her which resulted into rift between the husband and wife. Therefore, there is a sufficient and reasonable cause to live separately. In view of that, the judgment of learned Judge of the Family Court deserves to be set aside.

7. *Per contra*, learned counsel for the non-applicant supported the judgment of learned Judge of the Family Court and submitted that the applicant resided along with

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the non-applicant for 10 months. Her cross examination shows that she never resided at Sukli, but she resided along with the non-applicant at Yavatmal. Therefore, the allegations levelled by the applicant to the extent that she was forced to live at Sukli are falsified during her cross examination. He further submitted that the name of nominee Manish is recorded by the bank mistakenly. This fact is also proved by the non-applicant. Thus, it is clear that without ascertaining the facts, the applicant has left the matrimonial house. As far as allegations of ill-treatment is concerned, the false complaint is lodged as her cross examination itself shows she resided at her in-laws house only for 15 days. Thus, the evidence of the applicant itself is sufficient to show that without any sufficient reason, she has left the house. Therefore, the judgment and order rejecting the petition for maintenance is proper and legal one and no interference is called for.

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8. After hearing both the sides and perusing the evidence, it reveals that relationship between the applicant and the non-applicant is not disputed. It is also not disputed that they both performed the marriage at an advanced age. The applicant has reiterated the contention raised by her in the application while filing affidavit of examination-in-chief. During cross examination, she specifically admitted that at the time of marriage, the non-applicant informed that his house at Yavatmal is rented. He is attending the job by up and down from Pusad to Yavatmal. She stayed for 15 days at village Sukli after the marriage and, thereafter, resided with the non-applicant at Yavatmal. She further admitted that she and the non-applicant were only residing at Yavatmal and her in-laws were residing in the village. More specifically, she admitted that by seeing name of one Manish, she drawn inference that the non-applicant is

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already married and Manish is his son and he informed about the same to her parents. Thus, this admission sufficiently shows that she has not ascertained the fact as to whether there is any relationship between the non-applicant and one Manish. She further admitted that the non-applicant was serving in a non-grant college and receiving salary of Rs.9000/-.

9. In support of her contentions, the applicant placed reliance on salary certificate Exh.20, 7/12 extract Exhs.22 to 25, and copy of the FIR Exh.26. She also examined her relative Sudhar Tarale vide Exh.29 in support of her contentions. In his affidavit-in-chief, he stated that he is close relative of the applicant. At the time of marriage, the non-applicant represented that he is Lecturer in a college and drawing handsome salary and also doing private coaching classes and getting handsome income. It was also represented that he is having residential

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accommodation at Sukli. Therefore, by incurring huge expenses, the marriage of the applicant was performed with the non-applicant. Subsequently, it was informed to him that the applicant was driven out of the house by the non-applicant in the month of October 2016. It further revealed that name of nominee as Manish was written in passbook of the non-applicant and, therefore, the applicant was shocked and it revealed to her that the non-applicant is already married. She was ill-treated and, therefore, she filed the petition. His cross examination also shows that the marriage of the applicant with the non-applicant was settled due to mediation by the one Anil Patil and his wife Vinaya Patil. It further shows that he was not present when the marriage was settled. He specifically admitted that whatever information he received about the non-applicant was given to him by the applicant. He never personally visited the bank to

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enquire about the name of Manish. Thus, his cross examination also shows he is not having personal knowledge as to the representation made by the non-applicant at the time of settlement of marriage.

10. The non-applicant also adduced his evidence and reiterated the contentions as per his written statement. His cross examination also shows that he works as a Lecturer on non-grant basis. He is conducting the tuition classes. He was not present in the first meeting when the marriage was settled.

11. The non-applicant has also examined his father Bhaurao Darne who stated that the false cases are filed by the applicant against them. One Subhash Khonde is examined by the non-applicant to prove that he is serving as a Lecturer on non-grant basis. The evidence of this witness shows that the non-applicant is serving on non-

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grant basis and drawing salary of Rs.9000/-. Exh.49 is the extract of pay register.

12. The non-applicant also filed an application before the Family Court seeking permission to read the evidence recorded in Petition No.10/2017 filed by the applicant for dissolution of marriage wherein the applicant has examined Nikhil Borkar, a bank official who testified that in nomination form, name of Manish is mentioned and the relationship is mentioned as son. During cross examination he admitted that the said entry was taken mistakenly and, therefore, it was corrected subsequently.

13. Thus, the contention of the non-applicant is that entry in the name of Manish as his nominee was taken by the bank mistakenly.

14. After perusal of the evidence, it is to be seen whether the applicant is entitled for maintenance.

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15. Section 125 of the Code deals with order for maintenance for wives, children, and parents which reproduced as under:

125. Order for maintenance of wives, children and parents. - (1) If any person having sufficient means neglects or refuses to maintain -

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or

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such child, father or mother, at such monthly rate [* * *] as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct :

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this subsection, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso

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shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation. - For the purposes of this Chapter, -

(a)"minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority,

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not re-married.

[(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due

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in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made :

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. - If a husband has contracted marriage with another woman or keeps a mistress,

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it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

16. The Scheme of Section 125 of the Code shows that claim of a wife for maintenance has to be allowed if the following ingredients are proved:

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- (i) that the wife is unable to maintain herself;
- (ii) that the husband has sufficient means to pay maintenance to the wife, and
- (iii) the husband neglects or refuses to maintain his wife.

17. The neglect or refusal referred to in Section 125(1) of the Code is only of the obligation to maintain the wife. If no maintenance is paid either negligently or deliberately, Section 125(1) comes into play. The reasons for non payment of maintenance is irrelevant under Section 125(1). Neglect or refusal to maintain exists if there is non payment of maintenance - whether deliberately or negligently whatever be the cause. Separate residence by a wife without just ground or without sufficient reason does not militate against the fact of neglect or refusal to maintain. Neglect or refusal to

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maintain exists whenever there is breach of the obligation to maintain whether negligently or deliberately whether there be justifiable and sufficient reasons or not for separate residence. The fact of neglect or refusal to maintain alone is relevant under Section 125(1) of the Code. Normally a husband is liable to maintain his wife, whether she resides with him or elsewhere. If her residence elsewhere is on account of her refusal to live with him and discharge her marital obligations, his obligation to maintain her ceases. But if her refusal to live with him is justifiable, his liability to maintain her will not cease. If it is the husband who leaves his wife, and neglects her, then also his liability to maintain her in the form of payment of separate maintenance will subsist. A husband can successfully resist the claim under Section 125(1) of the Code for maintenance of a wife residing separately only if he comes within the sweep of the

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second proviso to Section 125(3) of the Code. Where the wife resides separately and the husband wants to resist the claim for maintenance on that ground, he must necessarily make an offer satisfying the second proviso to Section 125(3) of the Code to maintain her on condition that she lives with him. In spite of such offer made by him, if she refuses to live with him, then and only then, does the Magistrate have the duty to consider the grounds of refusal stated by her. If the Magistrate is satisfied that there is such a *bona fide* reason for the wife to live separately he can consider the application of the wife. Thus, it is to be understood the concept of refusal of the wife to leave her husband.

18. To understand what can amount to a refusal under Section 125(4) and 125(5) of the Code, the second proviso to Section 125(3) of the Code makes it crystal

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clear that it is incumbent that the husband must offer to maintain the wife on condition of her living with him.

19. The scheme of Section 125 Cr.PC is thus very evident. A husband is liable to maintain his wife wherever she is, provided she is unable to maintain herself, provided he is having sufficient means. Once it is shown by husband that despite of *bona fide* offer she refuses to live with him, burden is shifted to the wife to show sufficient or just reasons to prove that her separate residence is justified.

20. Two words, “neglect” and “refuse” mean failure on the part of the party, bound to maintain even in absence of a demand. A person is said to “refuse” when he denies or declines to do what is asked. “Refusal” is always a willful and a deliberate act. On the other hand, the word “neglect” imports an omission accompanied by some kind

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of culpability in the sense of a blameworthy conduct. Neglect is not always synonymous with omission. A person "neglects" who is remiss in paying attention to or in discharging duty towards another. "Neglect" is, therefore, not a mere omission without fault. It is an omission accompanied by some kind of censurable conduct on the part of the husband. But a husband cannot be said to have neglected or refused to maintain his wife who voluntarily lives apart from him.

21. By applying these principles, if the entire evidence is appreciated, it reveals that the allegations of the applicant, that the non-applicant represented himself that he is drawing handsome salary and serving as Lecturer and owns his house, are falsified as she admitted during her cross examination that the non-applicant informed her that the house at Yavatmal is rented house. As to the ill-treatment, it reveals that she stayed only for 10 months

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with the non-applicant. After the marriage, she stayed only for 15 days at village Sukli.

22. Thus, the allegations about ill-treatment are also not proved by the applicant. In specific words, she admitted that she misunderstood by seeing the name of Manish Darne and drawn inference that the non-applicant is already married and Manish is his son. The bank official to whom she has examined in another matrimonial proceeding specifically admitted that it was the mistake committed by the bank.

23. Thus, the entire evidence on record shows that it was the wife who left her husband on her own free will without any fault of the husband. Despite of the fact that the husband offered her that he is ready to maintain her, she has not joined his company and, therefore, the observations of learned Judge of the Family Court that the

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wife failed to prove “refusal” or “neglect” on the part of the non-applicant and is not entitled for maintenance are proper and legal one. Therefore, the revision is devoid of merits and liable to be dismissed and the same is **dismissed.**

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!