



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

CRIMINAL REVISION APPLICATION (REVN) NO. 258 OF 2023

APPLICANT :

Dhammapal Nandu Ahire,
Aged about 31 years,
Occupation – Labourer,
R/o Kinhola, Tah. Motala,
District – Buldhana.

VERSUS

RESPONDENTS :

1. Monika Dhammapal Ahire,
Aged about 27 years,
Occupation – Pvt. Service,
2. Ku. Apeksha Dhammapal Ahire,
Aged about 7 years,
Occupation – Education,
Guardian G.A.L. Mother i.e.
Applicant No.1, C/o. Bhagwan
Kharate, R/o Ward No.1,
Buldhana, Tah. and District – Buldhana.

WITH

CRIMINAL WRIT PETITION NO.12 OF 2024

PETITIONERS :

(Ori. N.A.No.1)

1. Dhammapal Nandu Ahire,
Aged about 31 years,
Occupation – Labourer.

(Ori. N.A.No.2)

2. Nandu Pundlik Ahire (Father)
Aged about 62 years,
Occupation – Agriculturist.

(Ori. N.A.No.3)

3. Smt. Sumitra Nandu Ahire (Mother),
Aged about 57 years,
Occupation – Agriculturist.

(Ori. N.A.No.4)

4. Sachin Nandu Ahire (Brother)
Aged about 27 years,
Occupation – Agriculturist.

Nos.1 to 4 R/o Kinhala,
Tah. Motala, District - Buldhana.

(Ori. N.A.No.5) 5. Shalu Sachin Mali (Sister),
Aged about 25 years,
Occupation – Agriculturist.

(Ori. N.A.No.6) 6. Sachin Mali (Brother in Law)
Aged about 37 years,
Occupation – Business.

Nos.5 & 6 R/o Malkapur,
Tah. Malkapur, District-Buldhana.

VERSUS

RESPONDENTS :

(Ori. Applicant No.1)

1. Monika Dhammapal Ahire,
Aged about 27 years,
Occupation – Pvt. Service,

(Ori. Applicant No.2)

2. Ku. Apeksha Dhammapal Ahire,
Aged about 7 years,
Occupation – Education,

Natural Guardian i.e. Mother
i.e. Respondent No.1,
C/o Bhagwan Kharate,
R/o Ward No.1, Buldhana,
Tah. and District – Buldhana.

Ms. Meena Hiwase, Advocate for applicant/petitioners.
Shri A. J. Thakkar, Advocate for respondent Nos.1 and 2.

CORAM: URMILA JOSHI-PHALKE, J.
DATED : 27/02/2026.

ORAL JUDGMENT :

1. By preferring criminal revision application, the
petitioners have challenged the order dated 29/08/2022 passed by

the 2nd Judicial Magistrate First Class, Buldhana granting maintenance @ Rs.2,000/- per month to respondent No.1 – wife, Monika Dhammapal Ahire and respondent No.2 – Daughter, Ku. Apeksha Dhammapal Ahire from the date of application i.e. 03/04/2021 in DV Application No.26/2021 whereas, in criminal revision application, the applicant husband has challenged the order of maintenance @ 4,000/- to the respondent No.1 - wife and Rs.3,000/- to the respondent No.2 – daughter from 29/06/2021.

The brief facts of the case which are necessary for the disposal of the matters are as under :-

2. The applicant and the respondent No.1 were married according to the rites and rituals on 04/05/2014 at Buldhana, Tahsil and Dist. Buldhana. The respondent No.2 begotten from the said wedlock. After marriage, she resumed cohabitation along with her husband at Kinhola, Tah.Chikhli, Dist. Buldhana and thereafter at Mumbai. As per her allegations, during her cohabitation, she found that her husband having illicit relations with one lady and used to chat and talk over a night with that lady. She alleged that her husband has also shown her the photographs of that lady and therefore, the quarrels were there between them. It is further alleged that he started ill-treating her, harassing her by detaining

her in the room and finally, in the year 2015, she narrated about her ill-treatment through mediators to her parents and therefore, her mother immediately rushed to Buldhana and taken her away. Thereafter, she lodged a report to Bharosa Cell where the matter was settled and her husband has taken her away for cohabitation. But there was no change in the behaviour of the present applicant. On the contrary, he started suspecting her character and therefore, she constrained to leave matrimonial house. She further alleged that she has also lodged complaint on the basis of which offence under Section 498-A of IPC is registered against the present applicant. She further contended that the present applicant is having agricultural property from which he is getting income of Rs.10,000/- to Rs.20,000/- per year. She further contended that he is also well educated and doing the job in a company and getting Rs.20,000/- per month. He also rented one flat and thereby also, he is getting income. Therefore, he is having sufficient means for granting maintenance.

3. The said application is strongly opposed by the present applicant on the ground that the respondent No.1 is running a Beauty Parlour. Therefore, she is having sufficient means to incur expenses. It is further contended by him that respondent No.1 used to talk her on mobile phone with one boy and therefore, he

questioned on that count and there was quarrel between him and respondent No.1. He further alleged that on 15/06/2014, he caught her red-handed while talking with one boy and narrated this fact to her parents and thereafter, she left the house. There is no sufficient and reasonable cause to leave the company of the applicant. Thus, there is no refusal and neglect on the part of the present applicant. In view of that, application deserves to be rejected.

4. To substantiate the contention, respondent No.1 entered into the witness box and reiterated as per her application. She is cross-examined at length during cross-examination. She admitted that the applicant is having two brothers and one sister and 7/12 extract which is filed by her is of her joint agricultural property. She denied that she is running Beauty Parlour and getting income from the said Beauty Parlour. She also denied that her father is having sufficient means. During cross-examination, it further came on record that the applicant is serving in company and drawing salary of Rs.25,000/- but has not produced any document to that effect. Thus, on going through the cross-examination of this respondent, it reveals that the evidence as to the ill-treatment remained unchallenged as there is absolutely no cross-examination on the said ill-treatment and refusal or neglect.

5. The applicant has also entered into the witness box and narrated as per his written statement before the Court. He is also cross-examined at length. During his cross-examination, admittedly nothing elicited from the cross-examination on record, but as far as evidence of the respondent No.1 is concerned which remains unchallenged as far as the ill-treatment is concerned.

6. Similarly, in the DV application also, applicant as well as respondents both have adduced their evidence. As per the evidence of respondent No.1, she was subjected for the domestic violence at the hands of the present applicant and admittedly, in the said proceeding also, her evidence as to the domestic violence remained unchallenged as there is no cross-examination on this aspect. Thus, in both applications, the evidence of the respondent No.1 remained as it is unchallenged as far as the ill-treatment and the domestic violence is concerned.

7. Learned Judicial Magistrate First Class as well as the Family Court, Buldhana both have considered that there is income source for the present applicant and thereby granted maintenance @ Rs.4,000/- and Rs.3000/- in Petition No.E-11/2021 and Rs.2,000/- in DV proceeding No.26/2021.

8. Learned counsel for the applicant submitted that granting of maintenance in DV proceeding is not disclosed by the respondent No.1 before the Family Court and the Family Court has also not considered while granting maintenance @ Rs.4,000/- that she has already received maintenance under the DV proceeding and therefore, adverse inference deserves to be inferred against the present respondents. She submitted that despite there is no evidence as to the income of the present applicant then also, exorbitant amount was granted towards the maintenance of the respondent Nos.1 and 2. She submitted that even though the evidence by way of 7/12 extract is considered by the Trial Court, however, the other legal heirs are already there and property is in the name of parents of the present applicant. He is not the sole owner as far as he is drawing salary of Rs.25,000/- is concerned. Admittedly, there is no evidence adduced to that effect. In view of that both matters of the respondent No.1 deserves to be rejected. She submitted that the revision as well as writ petition deserves to be allowed.

9. Per contra, Shri Thakkar, learned counsel for respondent Nos.1 and 2 strongly opposed the said contentions and submitted that the aspect of the ill-treatment is not at all

challenged by the present applicant. The evidence has remained unchallenged and even accepting that the applicant is doing the labour work, then also, the evidence is sufficient to show that he is having sufficient means to grant maintenance. The respondent no.1 has to incur the expenses towards the education of the daughter also and for all above grounds, the order passed by the learned Magistrate as well as Family Court is not excessive and exorbitant one and therefore, revision application as well as writ petition both deserve to be dismissed.

10. After hearing learned counsel for both sides and on perusal of the entire record, it reveals that the relationship between the present applicant and the respondent No.1 is not disputed. It is also not disputed that from the said wedlock, the work of respondent No.2 took place. On perusal of the evidence of the respondent No.1, it reveals that she has in detail narrated about the ill-treatment by filing of the complaint under Section 498-A of the IPC, filing the complaint at Bharosa Cell, but all these aspects are not challenged during the cross-examination. The entire cross-examination is in respect of the income of her parents as well as other liability of the present applicant. There is no whisper or denial of the allegation that she was subjected for the domestic violence or ill-treatment. Thus, as far as aspect of refusal

and neglect is concerned, which is not challenged by the present applicant.

11. The object of Section 125 of the Code is to provide a summary remedy to save dependents from destitution and vagrancy, and thus to serve a social purpose apart from an independent obligation of the parties under their personal law. Since the object is to prevent vagrancy or destitution by means of a summary remedy before a Magistrate, jurisdiction is preventive rather than remedial or punitive foundation of an order under Section 125 is the neglect or refusal of the opposite party to maintain his wife, child or parents. "Refuse" means a failure to maintain or denial of the obligation to maintain after demand. "Neglect" on the other hand, means a default or omission to maintain, in the absence of a demand. Neglect or refusal may be implied from the conduct of a party and need not be a formal refusal. Refusal or neglect on the part of husband may be proved not only by express words, but also by his conduct.

12. Torture or ill-treatment in the husband's house would be sufficient for refusal by the wife-claimant to live with her husband, even though husband may not be guilty personally. Where a wife cannot reasonably hope to live with dignity with her

husband she may refuse to live with him. The offer must be bona fide and the same should not have been made with object to escaping the obligation to pay maintenance. The burden that the wife is refusing to live with him is to be discharged by the husband. But when once that is proved, it is for the wife to show that there are reasons for her living apart from the husband. The object of Section 125 is to arm wife in difficulty with a cause of action to get maintenance from her erring husband. Second proviso to Sub-section (3) of Section 125 is also relevant. Even though a person offers to maintain his wife with condition of her living with him and she refused to live with him, the Magistrate may consider ground of refusal as stated by wife- claimant and make an order.

13. In the light of above well settled principles, the evidence in the present case are taken into consideration, the reply given by the present applicant before the Court itself shows that he has alleged that she was having relations with one boy and she used to talk with him. Admittedly, no evidence is adduced in support of said contention but this allegation itself is sufficient for respondent No.1 to leave apart from the husband when he is suspecting her character. There is no other reason required for her to leave apart from the applicant husband. In view of that, the

contention of the respondent No.1 that she started residing separately as applicant has started suspecting her character is sufficient reason for her to leave separately from husband and that is sufficient to interpret that there was refusal or neglect on the part of the present applicant.

14. As far as grant of maintenance is concerned in two proceedings, this aspect is considered by the Hon'ble Apex Court in **Rajnesh Vrs. Neha and another**, reported in **(2021) 2 SCC 324** wherein the Hon'ble Apex Court has observed that to overcome the issue of overlapping jurisdiction and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts / District Courts and Magistrate Courts throughout the country and the directions were given as follows :-

- a] Where successive claims for maintenance were made by a party under different statutes, the court would consider an adjustment or set-off, of the amount awarded in the previous proceeding(s), while determining whether any further amount was to be awarded in the subsequent proceeding.
- b] It was made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding.
- c] If the order passed in the previous proceeding(s) requires any modification or variation, it would be required to be done in the same proceeding.

15. After considering the said directions also and after going through the evidence, admittedly in Petition No.E-11/2021, maintenance @ Rs.4,000/- is granted to respondent No.1 and Rs.3000/- to the respondent No.2 who is the daughter. In DV proceeding No.26/2021, the amount of Rs.2,000/- is granted to the respondent Nos.1 and 2. Admittedly, there is no evidence that the present applicant is serving and drawing salary of Rs.25,000/-. It is an admitted position that he is having an agricultural land and is getting income from the said agricultural land. Even it is accepted that the applicant is doing labour work. In today's scenario, he may get Rs.350/- to Rs.400/- per day from the said labour work. There is no other liability on him except the present respondent. In view of that, even accepting that in two proceedings, maintenance is granted considering that prices of essential commodities are touching to the sky and the education fees are also rising day by day. The respondent No.1 has to incur the expenses towards her food, clothing as well as education of respondent No.2 also. Thus, considering the prices of the essential commodities as well as education fees are rising day by day, the amount which is granted in both the proceedings is not excessive and exorbitant and therefore, no interference is called for.

16. In view of that, criminal revision application as well as criminal writ petition deserve to be dismissed. In view of that, I proceed to pass following order :-

ORDER

The Criminal Revision Application No.258/2023
as well as Criminal Writ Petition No.12/2024
both are dismissed.

[JUDGE]