

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

CRIMINAL REVISION NO. 216 OF 2019

APPELLANT

:

Amit

[REDACTED]

//VERSUS//

RESPONDENT

:

Rita

[REDACTED]

Mr. S.M. Bhangde, Advocate for the Appellant.

Mr. P.S. Tiwari, Advocate for the Respondent-sole.

CORAM : G. A. SANAP, J.

RESERVED ON : 25th NOVEMBER, 2022.

PRONOUNCED ON : 12th JANUARY, 2023.

JUDGMENT

01] Heard.

02] **Admit.** Matter is taken up for final disposal by consent of the learned advocates for the parties.

03] In this criminal revision, the husband-original respondent has challenged the judgment and order dated 26th June, 2019, passed in Petition No. E-203/2015, whereby the learned Judge of the Family Court at Nagpur allowed the petition and awarded the monthly maintenance at the rate of Rs.7,000/- to the wife-original petitioner No.1 and Rs.7,000/- to his minor daughter-original petitioner No.2. In this judgment, the parties would be referred by their nomenclature in the petition filed by the wife.

04] The petitioner No.1 and the respondent got married on 27th May, 2011. The couple was blessed with a daughter on 22nd March, 2012. It is the case of the petitioner No.1 that after marriage, she went to reside at the house of the respondent. She was treated properly for one or two months. Thereafter, the respondent started picking up quarrels with her on flimsy grounds. The respondent was acting under the influence of his mother. The mother of the respondent would also quarrel with the petitioner No.1. The respondent beat her on more than one occasion. The petitioner No.1 tried to give an understanding to the respondent and his mother, however, it was of no use. The respondent and his mother were not happy with her for the reason that the petitioner

No.1 did not fetch dowry as per their wish in the marriage. They used to taunt her on this ground since beginning. They made her life miserable.

05] It is stated that the respondent dropped the petitioner No.1 at the place of her parents on 22nd March, 2012. She gave birth to petitioner No.2. The respondent did not bother to make the enquiry as well as pay the hospital expenses. The respondent and his mother were not happy with the birth of the female child. She was, therefore, driven out of the matrimonial home. Since the respondent did not make any effort to establish cohabitation, she issued a notice through advocate to the respondent. She filed a petition for restitution of conjugal rights. During the pendency of the said petition, the matter was referred for mediation and the matter was settled through mediation. The petitioner No.1 went, as per the settlement, to reside at the house of the respondent with a fond hope that there would change in their attitude and behaviour. She stayed at the house of the respondent for two days. The respondent and his mother started ill-treating her. She was driven out of the matrimonial home. Since then, she has taken shelter at the house of her parents.

06] It is stated that she has no source of income. Therefore, she is unable to maintain herself and the petitioner No.2. The respondent is doing service in railway and he is earning salary around Rs.45,000/- per month. The petitioners are the only dependants of the respondent. The respondent did not bother to make a provision for the maintenance of the petitioners. The respondent has failed and neglected to maintain them. The petitioner No.1 claimed the maintenance at the rate of Rs.15,000/- per month for herself and Rs.5,000/- per month for petitioner No.2.

07] The respondent opposed the petition. According to the respondent, the facts stated in the application are false to the knowledge of the petitioner No.1. According to the respondent, he is a peace loving person. It is his case that after marriage for few days only, the petitioner No.1 behaved properly and sensibly with him and his mother. After few months of the marriage, the petitioner No.1 started showing her true colour. She was not doing the household work. She was quarreling with his mother and with him for petty reasons. She was insisting the respondent to live separately from his mother. The respondent did not agree to this, because he was the only person from the family staying at Nagpur

to look after his mother. Before the birth of the petitioner No.2, the petitioner No.1 went to her parents' house without informing the respondent. The respondent tried to fetch petitioner No.1 back, however, she did not respond properly.

08] It is further stated that the petitioner No.1, instead of joining the company of the respondent, filed a petition for restitution of conjugal rights. The petition was at the stage of argument when the petitioner No.1 and the respondent resumed cohabitation on account of the settlement of dispute in mediation. The respondent took all such positive steps to keep the petitioner No.1 happy in his family. It is stated that, however, there was no change in the behaviour of the petitioner No.1. She stayed with the respondent and his mother for hardly two days and left his house without his permission. Since then, she has been residing with her parents. According to the respondent, the petitioner No.1 has deprived him of the pleasure of her company as well as the pleasure of the company of his daughter i.e. petitioner No.2. It is further stated that without any reason, the petitioner No.1 deserted him. He has further stated that the petitioner No.1 caused mental torture and cruelty to him and his mother. He, therefore, filed a petition for divorce. It is stated that the petitioner No.1 is not

entitled to get the maintenance. The petitioner No.1 is doing service. On this averment, he opposed the application for maintenance.

09] At this stage, it is necessary to note that the divorce petition bearing Petition No.A-520/2015 and the petition for maintenance were clubbed together in view of the order passed on 31st December, 2016 by the Family Court. The parties led common evidence in both the matters. The learned Judge decided both the petitions by a common judgment and order dated 26th June, 2019. The learned Judge allowed both the petitions. The decree of divorce has been granted in the petition filed by the respondent on the ground of desertion and cruelty. The learned Judge also allowed the petition filed by the petitioners and quantified the monthly maintenance as above. It is pertinent to note at this stage that the petitioner No.1 has filed an appeal before the Division Bench of this Court and challenged the decree of divorce.

10] Being aggrieved by the order awarding maintenance as above, the respondent has filed this criminal revision. I have heard the learned advocates for the parties and perused the record and proceedings.

11] The learned advocate for the respondent submitted that the petitioner No.1 is not entitled to get the maintenance, because the decree of divorce has been granted on the grounds of desertion and cruelty. The learned advocate submitted that the petitioner No.1, without any sufficient reason, refused to live with the respondent. Therefore, she is not entitled to claim the maintenance from the respondent. The learned advocate further submitted that the petitioner No.1 is a Pharmacist. The learned advocate, relying upon the document at Exh.45 collectively, submitted that the petitioner No.1 has been working with M/s. Rawmax Pharmaceutical Pvt. Ltd. at Nagpur. The learned Advocate submitted that the respondent has obtained this document under RTI, which clearly shows that the petitioner No.1 is a Pharmacist with Registration No.126066 and she was employed at M/s. Rawmax Pharmaceutical Pvt. Ltd. The learned advocate submitted that this amounts to suppression of material facts. The learned advocate, therefore, submitted that the petitioner No.1 is not entitled to get the maintenance. The learned advocate further submitted that the learned Judge of the Family Court has not taken all these aspects into consideration and passed the order in favour of the petitioner No.1, which suffers from patent illegality.

12] The learned advocate for the petitioners submitted that the petitioner No.1 cannot be denied the maintenance due to the decree of divorce on the grounds of cruelty and desertion. The learned advocate submitted that even after the decree of divorce, until the petitioner No.1 remains unmarried, she is entitled to maintenance from the respondent, being a divorced woman. In order to substantiate his submission, learned advocate relied upon a decision in the case of *Rohtash Singh Vs. Ramendri (Smt.) and Others* reported in *(2000) 3 SCC 180*. The learned advocate further submitted that in the evidence adduced by the respondent, he has not uttered a word with regard to the basic allegations made by the petitioners on the point of their inability to maintain themselves, the income of the respondent and the failure and neglect on the part of the respondent to maintain themselves. Learned advocate pointed out that in his evidence i.e. examination-in-chief, he has mainly focused on the allegations made against the petitioner No.1 with regard to her conduct and behaviour. The learned advocate, therefore, submitted that the evidence of the petitioner No.1 to substantiate her claim to get the maintenance under Section 125 of the Code of Criminal Procedure, 1973 has literally gone unchallenged and uncontroverted. The learned advocate further submitted that on the basis of the document at

Exh. 45, it is not possible to arrive at any conclusion with regard to the income of the petitioner No.1. The learned advocate further submitted that the respondent could have examined the witnesses to substantiate this claim. The learned advocate further submitted that the respondent in his evidence has categorically admitted that he on his own dropped the petitioner No.1 at the house of her parents somewhere in the month of September/October, 2011. The learned advocate submitted that the petition filed by the wife for restitution of conjugal rights was an opportunity to the respondent to make good his contention by admitting the claim of the wife and consenting for restitution of conjugal rights. The learned advocate pointed out that in his evidence particularly the cross-examination, he has admitted that he is not ready to establish the cohabitation with the petitioner No.1. The learned advocate submitted that due to bad experience after the settlement, the petitioner No.1 would have felt that no purpose would be served by making further attempt to establish the cohabitation with the respondent and, therefore, that she had withdrawn the proceeding for restitution of conjugal rights. The learned advocate submitted that the petitioners have proved that they are entitled to get the maintenance. It is submitted that the quantified maintenance, considering the status of the parties and existing rise in prices of

the commodity, is just, proper and reasonable.

13] It is undisputed that the marriage between the petitioner No.1 and the respondent has been dissolved by decree of divorce. The petition for divorce has been decreed on the ground of cruelty and desertion. The moot question, therefore, is whether the same would disentitle the petitioner No.1 to claim the maintenance from the respondent. It would, therefore, be profitable to consider the settled legal position from the decision in the case of ***Rohtash Singh*** (supra). The paragraphs 10 and 11 of the said judgment would be relevant for the purpose of addressing the issue involved before me. It would, therefore, be appropriate to reproduce the paragraphs 10 and 11 of the said judgment, which read thus:

“10. Claim for maintenance under the first part of Section 125 CrPC is based on the subsistence of marriage while claim for maintenance of a divorced wife is based on the foundation provided by Explanation (b) to sub-section (1) of Section 125 CrPC. If the divorced wife is unable to maintain herself and if she has not remarried, she will be entitled to maintenance allowance. The Calcutta High Court had an occasion to consider an identical situation where the husband had obtained divorce on the ground of desertion by the wife but she was held entitled to maintenance allowance as a divorced wife

under Section 125 CrPC and the fact that she had deserted her husband and on that basis a decree for divorce was passed against her was not treated as a bar to her claim for maintenance as a divorced wife. (See: Sukumar Dhibar v. Anjali Dasi.) The Allahabad High Court also, in the instant case, has taken a similar view. We approve these decisions as they represent the correct legal position.

11. Learned counsel for the petitioner then submitted that once a decree for divorce was passed against the respondent and marital relations between the petitioner and the respondent came to an end, the mutual rights, duties and obligations should also come to an end. He pleaded that in this situation, the obligation of the petitioner to maintain a woman with whom all relations came to an end should also be treated to have come to an end. This plea, as we have already indicated above, cannot be accepted as a woman has two distinct rights for maintenance. As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125(4). In another capacity, namely, as a divorced woman, she is again entitled to claim maintenance from the person of whom she was once the wife. A woman after divorce becomes a destitute. If she cannot maintain herself or remains unmarried, the man who was once her husband continues to be under a statutory duty and obligation to provide maintenance to her.”

14] In the case of **Rohtash Singh** (supra), the marriage was dissolved on the ground of desertion. The prayer made by the wife

for maintenance was opposed on this ground. The Hon'ble Apex Court has held that the wife is entitled to claim the maintenance from former husband, if she cannot maintain herself and remains unmarried. It is held that the decree of divorce granted on the ground of desertion in favour of the husband cannot be treated as a bar to the wife to claim the maintenance from the husband as a divorced woman. In my view, the law laid down is a complete answer to the submissions advanced on this point by the learned advocate for the respondent. I, therefore, conclude that merely because of the decree of divorce on the ground of desertion and cruelty, the husband would not be absolved of his duty to pay the maintenance to the wife under Section 125 of the Cr.PC.

15] The second important contention raised is with regard to the entitlement of wife to receive the maintenance on the ground that she on her own without a sufficient reason refused to live with the respondent. The learned advocate in order to substantiate this argument relied upon sub-section 4 of Section 125 of the Cr.PC. In my view, there is no force in this argument as well. The couple was blessed with a daughter. It can be seen from the record and particularly the evidence of the respondent that he was under the control of his mother. It is his case that the petitioner

No.1 would taunt him as mama's boy. In his cross-examination, he has categorically admitted that the petitioner No.1 stayed in the matrimonial home for about 2-3 months after the marriage. He has admitted that on the occasion of Rakshabandhan Festival, he dropped the petitioner No.1 at the house of her parents. He has stated that thereafter once or twice, he had gone to her parents to fetch her back and took her to the matrimonial home. He has stated that thereafter the petitioner No.1 stayed at the matrimonial home. He has further admitted that since he had to go to Somnath with his mother, he had dropped the petitioner No.1 at her parents' house. He has categorically admitted in his cross-examination that thereafter he personally did not go to fetch her back. In my view, this categorical statement made by the respondent in his cross-examination would show that he on his own dropped the petitioner No.1 at her parents' house. In my view, in this context, the notice issued by the petitioner No.1 to the respondent calling upon him to resume the cohabitation assumes importance. It is to be noted that after issuance of the notice by the petitioner No.1, no serious efforts were made by the respondent to fetch her back. The petitioner No.1 was constrained to file the petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. During the pendency of the petition for restitution of conjugal

rights, the dispute was referred for mediation and the mediation was successful. The petition was kept pending. The petitioner No.1 joined the company of the respondent at his house. It is the case of the petitioner No.1 that she stayed at the house of the respondent for one or two days, but during this period, she was again subjected to torture and ill-treating. She has stated that she was driven out of the matrimonial home by the respondent and his mother.

16] In my view, withdrawal of the petition for restitution of conjugal rights needs to be appreciated in this background. If the petitioner No.1 had no desire at all to establish the cohabitation with the respondent, she would not have at all agreed to join the company of the respondent. It is pertinent to mention at this stage that by this time, the daughter was born. The petitioner No.1, therefore, had no alternate than to take a shelter at the house of the respondent. After the birth of the daughter, the petitioner No.1 was completely entangled in the marital tie. Therefore, in my view, the withdrawal of the petition for restitution of conjugal rights cannot be used against the petitioner No.1 to deny her the maintenance. The only inference in the backdrop of the above facts possible is that after all these efforts and settlement, she might have seen no change in the behaviour and attitude of the respondent and her

mother and, therefore, she would have lost all the hopes to join and continue the company of the respondent. The learned Judge of the Family Court has taken this aspect into consideration. Therefore, in this case, the petitioner No.1 alone cannot be blamed for this state of affairs. It is true that the decree of divorce has been granted in the petition filed by the respondent. The said decree is challenged by filing an appeal, therefore, it would not be appropriate in this proceeding to make any further comment on this point.

17] Be that as it may, the fact remains that the petitioner No.1 alone could not be held responsible for this state of affairs. The petitioners have categorically stated that they are unable to maintain themselves and the respondent has not made any provision for their maintenance. It is undisputed that the petitioner No.1 with her daughter-petitioner No.2 is residing at the house of her parents. Even after the decree of divorce, the petitioner No.1 has not re-married. She is, therefore, a divorced woman. Being a divorced woman, she is entitled to get the maintenance. The respondent without a whisper in his affidavit of evidence to rebut the basic contentions of the petitioners on the point of his liability to maintain them and their inability to maintain themselves, has produced on record the evidence in the form of Exh.45, to deny

the claim of the petitioner No.1. The perusal of the affidavit of examination-in-chief of the respondent would show that he has not adduced evidence in rebuttal, to deny the claim of the maintenance made by the petitioner No.1 and petitioner No.2, his monthly income and the source of income of the petitioner No.1. In my view, therefore, this document would be an evidence without pleading. Even if it is assumed for the sake of argument that this document has some evidentiary value, it cannot be relied upon as a basis to rebut the contention of the petitioner No.1. It is true that the petitioner No.1 is the registered Pharmacist. The document indicates that she was employed at a pharmacy shop. The document is silent with regard to her salary. It is further pertinent to note that the learned Judge of the Family Court has observed that this licence was used by the Pharmaceutical Company only for the period from 17th March, 2017 to 21st July, 2017. The document at Exh. 45 is dated 3rd October, 2017. The document is, therefore, self-explanatory and as such, it proves that after 21st July, 2017, the petitioner No.1 had no concern with the M/s. Rawmax Pharmaceutical Pvt. Ltd. In my view, therefore, this documentary evidence also loses significance. The evidence of the petitioner No.1 to substantiate her claim for maintenance on all counts has gone unchallenged and uncontroverted. The respondent has not

led any evidence in the rebuttal to controvert the case of the petitioner No.1 and the evidence adduced by her. The claim of the petitioner No.1 cannot be discarded only on the ground that she is holding a diploma in pharmacy. She has taken shelter with her daughter at the house of her father. The respondent has not made any provision for the maintenance of the daughter. The daughter was born on 22nd March, 2012. It, therefore, remains undisputed that as on date, the daughter would be more than 10 years old. The daughter is taking education. On the basis of the evidence adduced by the petitioner No.1, she has proved that she has no source of income and able to maintain herself and her daughter. She has further proved that the respondent despite having sufficient means has failed and neglected to maintain herself.

18] This would take me to the quantum of the maintenance. The respondent has not denied either the order granting maintenance to petitioner No.2 or the quantum of maintenance awarded by the learned Judge of the Family Court. He has only disputed the claim of the petitioner No.1. The respondent is working in railway as a Commercial Clerk. At the time of the judgment, his gross salary as per 7th Pay Commission was Rs.45,000/- to Rs.46,000/- per month. The respondent has

admitted that his mother is getting pension and his younger brother is doing service at Ahmedabad. It, therefore, goes without saying that no person other than the petitioners are dependant on the income of the respondent. The respondent is well qualified and residing in a railway quarter. The petitioner No.1 is also qualified woman. She is holding a diploma in pharmacy. Considering her background and the social status, she must be accustomed to lead standard lifestyle. She is entitled to live, befitting her qualification and position of the respondent. The learned Judge has taken all these facts into consideration in quantifying the maintenance. In this backdrop, applying any standard and particularly the rise in prices of the essential commodities, the monthly maintenance quantified at the rate of Rs.7,000/- per month is just, reasonable and proper. In my view, therefore, on all counts, the contention raised by the respondent-husband cannot be accepted. The revision, therefore, fails.

19] The revision stands dismissed.

(G. A. SANAP, J.)