

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision Petition No. 1258/2019

Richa Dharu W/o Hemant Panwar D/o Sh. Dilip Kumar, Aged About 27 Years, R/o Behind Nagar Parishad, Ward No. 43, Bapu Colony, Bikaner (Raj.)

-----Petitioner

Versus

Hemant Panwar S/o Shri Rameshwar Panwar, R/o Near Govt. Secondary School, Harijan Basti, Ratangarh, Dist. Churu. (Raj.)

-----Respondent

For Petitioner(s)	:	Mr. Kan Singh Oad
For Respondent(s)	:	Mr. Kaushal Gautam with Mr. Kunal Kalla

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Order

23/05/2022

This Criminal Revision Petition has been preferred claiming the following reliefs:

"It is, therefore, humbly prayed that this criminal revision petition may kindly be allowed and it is therefore, humbly prayed that the revision petition may kindly be allowed and order dated 28.08.2019 passed by the learned Family Court No.2, Bikaner in Case No.227/2018 (586/16) titled as Richa Dharu Vs. Hemant Panwar, may kindly be quashed and set aside and the application filed by the petitioner under Section 125 Cr.P.C. may kindly be allowed and accordingly award the amount of maintenance to the petitioner Rs.30,000/- per month from the date of filing of the application."

Learned counsel for the petitioner-wife submits that the respondent-husband is working on the post of Branch Manager in Bank of Baroda and is earning income of Rs.90,000/- per month. Learned counsel further submits that the learned court below has

denied the monthly maintenance to the petitioner-wife only on the ground that the divorce has been allowed between the parties. Learned counsel also submits that the divorce was ex-parte claimed by the respondent.

Learned counsel has relied upon the proviso to Section 125(1) Cr.P.C., the explanation, as per which, the definition of "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

Learned counsel further submits that once the petitioner-wife has not remarried, is entitled for maintenance and any divorce petition cannot be construed as it was a voluntary desertion of the parties. Learned counsel also submits that since there was an established cruelty, therefore, the marriage derailed, but that does not mean that the respondent-husband can be absolved from the liability of maintenance.

Learned counsel for the respondent-husband vehemently opposes the submissions on the ground that once the wife has failed to discharge the duties as a wife and is no more abiding by the conjugal rights, therefore, the decision arrived at by the learned court below is justified.

This Court, after hearing learned counsel for the parties as well as perusing the record of the case, finds that the learned court below has come out with a judgment without considering the definition of wife provided under Section 125(1) Cr.P.C. The learned court below has gravely erred in denying the maintenance on the ground of divorce and cruelty. The maintenance is one thing, which has to be granted and a lady suffering cruelty, cannot be said to have deserted or voluntarily residing away. The

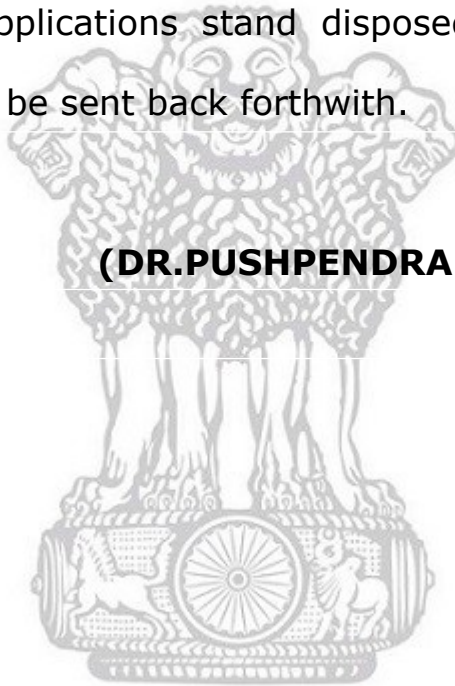
circumstances created by the husband, if not conducive, are bound to push away the wife.

In view of the above, the present revision petition is allowed. The impugned order dated 28.08.2019 passed by learned Family Court No.2, Bikaner in Case No.227/2018 (586/16) (Richa Dharu Vs. Hemant Panwar) is hereby quashed and it is directed that the petitioner-wife shall now be entitled to receive the maintenance to a sum of Rs.10,000/- per month from the respondent-husband from the date of filing the petition. It is needless to say that any interim maintenance granted shall be excluded from the amount so due.

All pending applications stand disposed of. Record of the learned court below be sent back forthwith.

(DR.PUSHPENDRA SINGH BHATI), J.

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