

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

CRIMINAL REVISION APPLICATION No.268 OF 2022

(Shri Mudassir s/o. Yousuf Khan Vs. Shirin w/o. Mudassir Khan and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. R.R. Vyas, Advocate for the applicant.
Mr. I.A. Fidvi, Advocate for non-applicants.

Coram : Bharati Dangre, J.

Date : 09.02.2023.

1. Heard learned counsel for the applicant and learned counsel for the non-applicants.
2. The order passed by the Family Court, Bhandara on an application filed by the wife and the children under Section 125 of the Criminal Procedure Code on 1st August 2022 is assailed in the present revision application.
3. The non-applicant-wife along with two minor children approached the Family Court by filing an application under Section 125 of the Cr.P.C. claiming maintenance of Rs.39,000/- per month to maintain herself as well as her two minor children. The amount was claimed in the backdrop of a contention that she is unable to maintain herself and her children and their requirement demand that an amount of Rs.7,000/- per month shall be paid for her children, whereas the applicant No.1 should be paid an amount of Rs.20,000/-

per month. It was contended that the applicant is a businessman who is dealing auto deal business of selling and purchasing four wheelers and two wheelers and earns an income of Rs.1,00,000/- per month.

4. On consideration of the evidence led before the Family Court considered the issue whether the non-applicants are able to maintain themselves and whether the applicant has sufficient needs to provide maintenance and despite that the applicant has neglected or refused to maintain the non-applicants.

5. On careful scrutiny of the evidence placed before it, the learned Judge of the Family Court has awarded maintenance of Rs.8,000/- per month to non-applicant No.1 i.e. the wife and Rs.5,000/- to the non-applicant Nos.2 and 3 i.e. minor children. He has justified the said order with supporting reasons which are drawn from the material that was placed before me. The husband was also directed to clear the arrears within a period of six months and continue to pay recurring maintenance. He was also cast the responsibility of entire educational expenses of the non-applicant Nos.2 and 3.

6. The learned counsel for the applicant fairly stated that he is not desirous of contesting the order of maintenance as well as educational expenses which are fastened upon him as against two minor children. His submission is that the award of maintenance of Rs.8,000/- to the wife is without any justification. He

would advance his submission to the effect that he made every attempt to cohabit with his wife and for that purpose he invite my attention to the paragraph 15 of the impugned order which makes reference the cross-examination of the wife where she has admitted that attempts were made at the end of the husband to bring her back, but there was no response.

7. Learned counsel for the applicant, therefore, seek recourse to sub-section (4) of Section 125 by submitting that without any sufficient reason the wife has refused to live with him and therefore, he is not liable to pay any maintenance towards her.

8. I am unable to accept the said submission of the learned counsel for the applicant, after hearing learned counsel for the non-applicant-wife and on perusal of the application filed before the J.M.F.C. Bhandara claiming maintenance under Section 125.

9. On perusal of the application it reveals that the non-applicant-wife has referred several instances of mental and physical torture faced by her when she was in cohabitation with the husband and she has narrated the instances specifically by submitting that she was being fed up with approach of the husband where she had to bear the physical and mental cruelty, which badly affected her health and she had to take shelter with her parents. The exhaustive application make reference to several such instances which according to wife amounted to physical and mental torture and the narration is that

she is a victim of harassment at the hands of the husband which forced her to leave husband's house and continue to stay with her parental house.

10. Section 125(4) of the Cr.P.C. dis-entitled a claimant to claim maintenance under this section if she is living in adultery, or if, without any sufficient reason, refuses to live with her husband, or if they are living separately by mutual consent. None of the above ingredients are established by the applicant-husband as merely saying that he was and is always ready and willing to cohabit is not sufficient ground to absolve himself of the liability to pay maintenance by projecting that without any sufficient reason wife has left his company. The application for maintenance has several grounds which justify the non-applicant No.1 and her children to stay away from the applicant and therefore, I am not at all convinced with the argument of the learned counsel for the applicant that sub-section (4) of Section 125 is applicable in the present case.

11. Considering the fact that the wife was unable to maintain herself and it is not the case of the applicant-husband that the wife has her independent earnings, particularly by making reference to the gala/shops owned by the non-applicant No.1's father which has been turned down on the ground that has not connected with her when the wife is claiming maintenance to maintain herself and her minor children. Apart from this, the earning of the husband have come on record and the

Court has recorded that he has borrowed sum of Rs.15,00,000/- for conducting his business and by recording that even if he is in financial distressful condition, he cannot avoid to maintain his wife as well as his children. Since the husband has not disputed his liability towards the amount of maintenance as well as educational expenses, it is morale and legal responsibility to maintain a wife who is unable to maintain herself. In these circumstances, I do not find any legal lacuna in the judgment of Family Court directing the applicant-husband to pay maintenance of Rs.8,000/- per month to his wife.

12. Upholding order dated 1.8.2022, the revision application deserves to be dismissed.

13. The Family Court, Bhandara had directed husband to clear arrears due and payable to the non-applicants on or before 5th February, 2023, but it is informed to the Court that the said order is not complied with.

14. In these circumstances, let the applicant to obey the order dated 5th February, 2023 and clear all the arrears by 31st March, 2023.

15. It is made clear that there is no application for extension of time, which shall be entertained.

(Bharati Dangre, J.)