



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

CRIMINAL REVISION APPLICATION NO.57 OF 2017

**APPLICANT:** Sau. Alka w/o Hemraj Khode, Aged 30  
(Orig. PETITIONER) Housewife, R/o C/o  
Vasantao Ishwarji Kadu, 18/A,  
Chitnavis Nagar, Big Tajbag, Umrer  
Road, Nagpur.

-VERSUS-

**NON-APPLICANT:** Shri Hemraj S/o Kesharaoji Khode,  
(Orig. Non-applicant) Aged about 30 years, Occ: Pvt Service,  
R/o Kolhe Layout, Khadgaon Road,  
Wadi, Nagpur.

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Shri M. D. Chikhale, Advocate for the applicant.

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**CORAM: A.S. CHANDURKAR, J.**

**DATED: 05-10-2017**

**ORAL JUDGMENT :**

1. The applicant has filed this criminal revision application under Section 19(4) of the Family Courts Act,

1984 being aggrieved by the judgment dated 2-1-2017 in Petition No.E-489/2013 whereby the proceedings for grant of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (for short, the code) have has been dismissed. The Court issued notice to the non-applicant on 29-8-2017. Despite service and grant of opportunity, the non-applicant has not chosen to contest the proceedings. The revision application is accordingly heard finally.

2. According to the applicant, she was married with the non-applicant on 31-3-2009. On account of differences between the parties, the non-applicant filed petition No.A-453/2010 on 17-6-2010 seeking divorce under Sections 13(1)(ia) 12 (1)(a) and 13(1)(iii) of the Hindu Marriage Act, 1955. The parties led evidence and on 4-2-2013, these proceedings filed by the non-applicant came to be dismissed. An appeal challenging this judgment is pending. On 26-9-2013, the present applicant filed proceedings for grant of maintenance under Section 125 of the Code. This application was opposed. The parties led evidence before the Family Court. The learned Principal Judge held that the applicant had proved that the non-applicant had sufficient income to

maintain her and that the applicant had no source of income. However, by observing that the applicant was not interested in residing with the non-applicant and that she had not given any notice for restitution of conjugal rights, the application came to be dismissed. Being aggrieved this revision application has been filed.

3. Shri M. D. Chikhale, learned Counsel for the applicant submitted that the learned Judge of the Family Court committed an error in going into the question as regards failure on the part of the applicant in filing the petition for restitution of conjugal rights or that she had not given any notice in that regard. According to him, the only requirement for grant of maintenance under Section 125 of the Code was inability of the applicant to maintain herself coupled with the fact that the non-applicant had sufficient means to provide maintenance. Relying upon the judgment of the Hon'ble Supreme Court in *Sunita Kachwaha and ors vs. Anil Kachwaha AIR 2015 SC 554*, it was submitted that maintenance has been wrongly denied to the applicant. He also referred to the deposition of the parties as well as admission of the non-applicant that he was not ready to take

the applicant for cohabitation. It is therefore submitted that the impugned order is liable to be set aside.

4. As stated above, the non-applicant has not chosen to contest the present application. With the assistance of the learned Counsel for the applicant, I have perused the records of the case and I have given due consideration to his submissions.

5. It is not in dispute that the non-applicant had filed proceedings for divorce which were dismissed on 4-2-2013. It is stated that the appeal challenging that adjudication is pending. After the adjudication of the proceedings for divorce, the applicant filed the present proceedings for grant of maintenance. According to her, she had no source of income and she was residing with her parents. The non-applicant despite having sufficient means had refused to maintain her. The learned Judge of the Family Court after considering the evidence on record recorded a finding that the applicant had proved that she had no source of income to maintain herself and that the non-applicant had sufficient means to maintain her.

6. In *Sunita Kachwaha (supra)*, the Hon'ble Supreme

Court has held that in proceedings for grant of maintenance which are summary in nature, the Court is not expected to go into the minute details of the matrimonial disputes between the parties. The pre-condition for grant of maintenance would be the inability to maintain the applicant. The observations in paragraphs 8 and 9 are relevant and they are reproduced as under :

“8. The proceeding under Section 125, Cr.P.C., is summary in nature. In a proceeding under Section 125, Cr.P.C., it is not necessary for the court to ascertain as to who was in wrong and the minute details of the matrimonial dispute between the husband and wife need not be gone into. While so, the High Court was not right in going into the intricacies of dispute between the appellant-wife and the respondent and observing that the appellant-wife on her own left the matrimonial house and therefore she was not entitled to maintenance. Such observation by the High Court overlooks the evidence of appellant-wife and the factual findings, as recorded by the Family Court.

9. Inability to maintain herself is the pre-condition for grant of maintenance to the wife. The wife must positively aver and prove that she is unable to maintain herself, in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. In

her evidence, the appellant-wife has stated that only due to help of her retired parents and brothers, she is able to maintain herself and her daughters. Where the wife states that she has great hardships in maintaining herself and the daughters, while her husband's economic condition is quite good, the wife would be entitled to maintenance.”

7. Perusal of the impugned order indicates that though it was noticed that the non-applicant had refused to cohabit with the applicant, the learned Judge observed that the same by itself was not sufficient to prove the neglect on the part of the non-applicant. Similarly, importance has been given to absence of any notice for restitution of conjugal rights. The conduct of the non-applicant while admitting that he was not ready to cohabit with the applicant cannot be ignored. In the light of the aforesaid legal position as well as the evidence on record, I find that the petition for grant of maintenance has been dismissed on untenable grounds. The applicant despite proving that she had no means to maintain herself has been deprived of maintenance. On this count therefore the impugned judgment cannot be sustained.

8. In view of aforesaid, the interests of justice require

that the proceedings for maintenance be decided afresh. Accordingly, the judgment dated 2-1-2017 in Petition No.E-489/2013 is set aside. The proceedings are remitted to the Family Court, Nagpur for deciding the same afresh on the basis of evidence available on record. It would be open for the parties to lead further evidence if they so desire. The proceedings be decided expeditiously. The record and proceedings be sent to the Family Court, Nagpur forthwith. The applicant shall appear before the Family Court on 23-10-2017.

9. The application is allowed in aforesaid terms. No costs.

JUDGE

/MULEY/