



2. By this revision, the applicant (the husband) has challenged judgment and order of the Family Court at Nagpur granting maintenance to the non-applicant (the wife) @ Rs.5000/- from 14.1.2017 to 31.12.2020 and Rs.6000/- from 1.1.2021 to 31.8.2024 and Rs.7000/- from 1.9.2024 onward in petition No.8/2017 dated 12.9.2024.

3. Brief facts necessary for disposal of the revision are as under:

The marriage of the husband and the wife was performed on 16.4.2012. After the marriage, the wife resumed cohabitation at the house of the husband. As per the allegations of the wife, on the day, when she resumed cohabitation, family members of the husband raised quarrel with her on the ground that less dowry was given and, thereafter, she was subjected for physical and mental harassment. She has specifically narrated incident dated 4.6.2024 on which day she was assaulted by the husband by means of Waist Belt and, therefore, she rushed to the police

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station. The police sent her to the Women Cell and, thereafter, the husband and his father raised quarrel with her. Though many efforts are taken by her and her family members for resolving the dispute, there was no response from the husband or his family members and, therefore, she was constrained to leave the matrimonial house and she took shelter at her parental house.

It is further contended by her that the husband is serving as "Gangman" in Railway Department and is drawing salary of Rs.25000/-. She has no income as the husband has refused and neglected to maintain her. She is unable to maintain herself. The husband has also not made any provision for her livelihood and, therefore, she was constrained to file an application for grant of maintenance in the Family Court at Nagpur.

4. The said application is strongly opposed by the husband on the ground that it was the wife who has left the matrimonial house without sufficient and reasonable cause

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and, therefore, she is not entitled for any maintenance. It is further contended that the fact, that the wife has filed a petition seeking divorce, itself is sufficient to show that she is not willing to cohabit with him and thereby she is not entitled for any maintenance.

5. The Family Court has recorded evidence of both sides and after appreciating the evidence, came to conclusion that there was a refusal and neglect on the part of the husband and thereby granted maintenance as the aforestated.

6. Being aggrieved and dissatisfied with the same, the present revision is filed on the ground that the wife has not proved the refusal/neglect on the part of the husband. The divorce petition was decided ex parte and as there is no refusal/neglect on his part, she is not entitled for any maintenance and, therefore, the revision application deserves to be allowed by quashing and setting aside the order of maintenance amount.

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7. Learned counsel for the husband reiterated the contentions and invited my attention towards the evidence on record. He submitted that the affidavit of examination-in-chief itself shows that it was the wife who has left the matrimonial house on 4.6.2014 as she eloped from the house which is sufficient to show that there was no refusal/neglect on the part of the husband and, therefore, the wife is not entitled for the maintenance.

He has also invited my attention towards the fact that the wife has filed the divorce petition which was disposed of by the Family Court ex parte. Thus, he submitted that the conduct of filing the divorce petition itself is sufficient to show that she is not willing to perform her matrimonial duties and, therefore, she left the house and, therefore, she is not entitled for any maintenance.

8. Per contra, learned counsel for the wife submitted supported the judgment of the Family Court and submitted that the decree of divorce is not challenged by the husband in

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any proceeding. He further submitted that the evidence of the wife shows that she was assaulted physically by the husband on 4.6.2014 and, therefore, she rushed to the police station and the police sent her to the Women Cell and many efforts are taken, but it was in vain and, therefore, she was constrained to take shelter at her parental house. Thus, it is sufficient to show that there was refusal/neglect on the part of the husband and, therefore, no interference is called for.

9. After hearing both sides and perusing the entire record, especially the evidence adduced by the wife, it shows that in her affidavit of examination-in-chief she has narrated that her marriage was performed on 16.4.2012. After the marriage, she resumed the cohabitation and on the first day of the cohabitation itself, family members of the husband raised quarrel with her on account of the dowry amount and, thereafter, she was harassed and ill-treated for the demand of dowry. On 4.6.2014, the wife was assaulted by the husband

by Waist Belt and, therefore, she rushed to the police station and the police sent her to the Women Cell. She was cross examined at length by the husband. After going through the entire cross examination, nothing is elicited to falsify her version regarding the assault on her as well as she rushed to the police station. The entire cross examination is regarding that she has filed the divorce petition. Admittedly, despite service of the notice, the husband has chosen not to contest the said divorce petition and, therefore, the petition filed by the wife was allowed by the Family Court.

10. As far as the contention of the husband is concerned, that the wife is not unable to maintain herself, it is denied by her and no evidence is brought on record to show that she is able bodied person and she is able to maintain herself by doing any work.

11. Thus, in absence of the evidence, the contention of learned counsel for the husband, that the wife is able to maintain herself, cannot be accepted.

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12. In support of his contentions, the husband has also adduced his evidence. He has reiterated as per his written statement. During his cross examination, he has admitted that he has not filed any document to show that the wife is residing at her parental house. He has also admitted that he is not aware whether the wife is residing at rented house.

13. Thus, it is sufficient to show that he has not taken care of his wife even after the marriage and he is under obligation to maintain her to know how she is leading life.

14. Thus, it is sufficient to show that there was refusal and neglect on the part of the husband.

15. The object of Section 125 of the CrPC 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 is the neglect or refusal of the opposite party to maintain his wife, child or parents. "Refusal" 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. Under sub-section (4), a wife without sufficient reason refuses to live with her husband is not entitled to maintenance under Section 125 of the CrPC. Neither in Sub-section (4) which deals with such a situation nor in Sub-section (5), the Code attempts to enumerate what would be sufficient cause for a wife-claimant to refuse to live with her husband and yet succeed in her claim for maintenance. It is left to be objectively determined by the Court having regard to the circumstances of case and social

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ideas and background facts. The Legislature has not exhaustively enumerated the grounds which would furnish a sufficient cause for non-payment of maintenance ordered under Sub-section (1) beyond the three grounds which are mentioned in Sub-section (4).

16. 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 seasons 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

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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.

17. In the light of the above propositions, if the facts of the present case are taken into consideration, admittedly, the husband, despite service of the notice, has not contested the divorce petition. His cross examination shows that he has not taken care of to know how his wife is living the life and, therefore, these circumstances are sufficient to show that there is refusal and neglect on the part of the husband.

18. In view of that, the order passed by the Family Court at Nagpur granting maintenance appears to be reasonable one.

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19. The considerations granting maintenance are reiterated by the Hon'ble Apex Court in the case of **Rajnish vs. Neha and ors, reported in (2021)2 SCC 324** wherein it is observed that, "in determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to (a) the position and status of the parties; (b) the reasonable wants of the claimant; (c) if the claimant is living separately, whether the claimant is justified in doing so; (d) the value of the claimant's property and any income derived from such property, or from the claimant's own earning or from any other source; and (e) the number of persons entitled to maintenance under this Act.

20. In the light of the above observations, admittedly, no provision was made for maintenance of the wife. There is nothing on record to show that she is earning for her livelihood. In that situation, grant of maintenance by the Family Court appears to be just and reasonable one. Thus,

Judgment

8 revn183.24

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the revision being devoid of merits is liable to be dismissed and the same is **dismissed**.

21. The husband shall pay the arrears amount within one month.

Revision stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

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