

**(1993) 03 BOM CK 0093****Bombay High Court****Case No:** Family Court Appeal No. 7 of 1992

Smt. Mangal Pandharinath Sathe

APPELLANT

Vs

Pandharinath Arjun Sathe

RESPONDENT

**Date of Decision:** March 23, 1993**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 125

**Citation:** (1994) 2 BomCR 348 : (1993) CriLJ 2758 : (1993) 1 MhLJ 788 : (1993) 3 RCR(Criminal) 562**Hon'ble Judges:** S.P. Kurdukar, J; P.S. Patankar, J**Bench:** Division Bench**Advocate:** S.S. Redekar, for the Appellant; D.B. Salvi, for the Respondent**Judgement**

Kurdukar, J.

This family court appeal is preferred by the appellant-wife (Original applicant) against the order dated 10th August, 1990 passed by the Family Court at Bandra, Bombay, granting maintenance of Rs. 300/- p.m. from the date of passing of the order but refusing to grant maintenance from the date of application made u/s 125 of the Criminal Procedure Code. The dispute in this appeal is therefore restricted to the past maintenance for the period of 4th September, 1986 till 10th August, 1990.

2. The respondent is the husband of the appellant. The appellant was married to the respondent on 14th May, 1983 according to Hindu Vedic rites. After the marriage, they resided together for few months at Kalachowki, Bombay. It is alleged by the appellant in her application filed u/s 125 of the Criminal Procedure Code that the respondent was treating her well for couple of months, but gradually he lost interest in her and started ill treating her. She was subjected to physical assault in addition to the insulting treatment that she was to face day in and out. The respondent and his parents did not provide food and clothing to her. They totally neglected the appellant. The respondent used to come late in the evening in a drunken condition

and used to assault her. The respondent every now and then was asking the appellant to leave the house otherwise he will drive her out. Despite intervention of the respectable persons of the locality, the respondent did not change his attitude.

3. It is further alleged by the appellant that some time in the year 1985, the respondent sent her to his native place to know about the agricultural work. At his native place, she fell ill, but nobody provided any medical help. The respondent, on coming to his native place, also assaulted her. According to the appellant, she thereafter came to her parent's house and since then she has been residing with them. The appellant and her parents persistently requested the respondent to take her back but he refused to take the appellant to the matrimonial home. The respondent also refused to maintain her. It is then stated by the appellant that the respondent is gainfully employed in J.K. Chemicals Ltd. at Thane and getting Rupees 2,000/- p.m. The appellant therefore prayed that the respondent has failed and neglected to maintain her and she may be provided with maintenance of Rs. 500/- p.m.

4. The respondent by his written statement dated 1st October, 1986 denied the allegations of ill-treatment. He, however, admitted the fact of marriage. According to the respondent, the appellant has left the matrimonial home without any justifiable cause. Despite repeated requests made by him and his relatives, the appellant was not willing to come back to the matrimonial home. It is denied by the respondent that he or his parents ever ill-treated and/or assaulted the appellant. He also denied that the appellant was not provided with food and clothing. It is the case of the respondent that when they were residing at Kalachowki, Bombay, the appellant insisted to have a separate residence and tries to coerce him by misbehaving with him and his parents. The appellant used to go to her parents' house frequently without informing him or his parents. The respondent also denied that the appellant ever fell sick and/or she was not given medical help. It is further pleaded by the respondent that the appellant has left the matrimonial home at her own sweet will on 7th July, 1984 and since then she has not returned back to the matrimonial home. The respondent also denied that he has failed and/or neglected to maintain his wife. He has expressed his readiness and willingness to cohabit with the appellant provided she comes back and behaves as good house-wife and assures him good behaviour. In paragraph 9 of the written statement, the respondent pleaded that his monthly earning is about Rs. 950/- With this small earning, he has to maintain himself and his parents. The claim of the appellant for maintenance is mala fide and the same be dismissed.

5. The appellant got her statement recorded on oath. The respondent also adduced his own evidence.

6. The learned trial Judge, after considering the evidence on record, came to the conclusion that the respondent, having sufficient means, neglected and refused to maintain the appellant. Consistent with this finding, the learned trial Judge under

the impugned order directed the respondent to pay maintenance at the rate of Rs. 300/- p.m. from the date of the order. The impugned order is dated 10th August, 1990.

7. Shri Redekar, the learned Counsel appearing in support of this appeal, urged that the learned trial Judge ought to have granted the maintenance from the date of application made u/s 125 of the Criminal Procedure Code. It is not disputed that the appellant filed the application for maintenance on 4th September, 1986. From the roznama, it appears that after establishment of the family court in Bombay, the application of the appellant came to be transferred some time in November, 1989. Before the Family Court, parties tried to settle but settlement could not be arrived at. Shri Redekar urged that the appellant right from the year 1984 has been residing with her parents. She has no independent source of income and therefore she is unable to maintain herself. Although the application for maintenance was filed on 4th September, 1986, the same could not be disposed of till 10th August, 1990. There was no fault whatsoever on the part of the appellant. The appellant is therefore entitled for maintenance from the date of application.

8. At the outset, it may be stated that the respondent did not file any appeal against the impugned order. The result therefore is that the respondent is liable to pay maintenance at the rate of Rs. 300/- p.m. from the date of impugned order. In effect, the respondent has acquiesced in the impugned order. As regards arrears of maintenance from the date of application till the date of order, Shri Salvi, learned Counsel for the respondent, urged that the impugned order does not call for any interference in view of the mandatory provisions contained in sub-section (2) of Section 125 of the Criminal Procedure Code. The impugned order therefore needs no interference. Sub-section (2) of Section 125 of the Criminal Procedure Code reads as under :-

"(2) Such allowance shall be payable from the date of the order, or if so ordered, from the date of the application for maintenance."

9. Relying upon the phraseology of this sub-section, learned Counsel for the respondent urged that the amount shall be payable as a rule from the date of order, but however, in the facts and circumstances of the case, it is open to the learned trial Judge to order payment of such allowance or maintenance from the date of application. Since no case for exercising a discretion was made out by the appellant, there was no occasion for the learned trial Judge to grant maintenance under the later clause of sub-section (2) of Section 125 of the Criminal Procedure Code. In support of his submission, he drew our attention to the decision of Madhya Pradesh High Court reported in (1983) 1 Crimes 590 Kum. Lachhmani v. Ramu. He drew our attention to paragraph 6 of the said judgment. This decision is rendered by a learned single Judge. In his judgment, the Court in paragraph 6 has observed as under :-

"No doubt the maintenance proceedings u/s 125 of Criminal Procedure Code is found to be pending for more than 5 years in the trial Court but that by itself is no sufficient reason for allowing the maintenance amount from the date of the application particularly when the normal rule is that the maintenance should be granted from the date of the order."

10. Shri Salvi then relied upon another decision rendered by the Allahabad High Court reported in [Ramesh Chandra Vs. Beena Saxena](#) . The learned Counsel drew our attention to paragraphs 3 and 4 of the said judgment. It lays down the same interpretation as regards Section 125(2) of the Criminal Procedure Code as given by the Madhya Pradesh High Court. Shri Salvi therefore urged that the law laid down by the Madhya Pradesh High Court and Allahabad High Court be preferred and accepted.

11. Shri Redekar, learned Counsel for the appellant, while encountering the submissions raised on behalf of the respondent, drew our attention to the decision of this Court reported in 1989 Mah LJ 1031 Sharda w/o. Gunwantrao Kadu v. Gunwantrao Punjabrao Kadu. This decision is rendered by a learned single Judge of this Court. The learned single Judge in this reported judgment has also considered the decision of the Madhya Pradesh High Court in the case of Kum. Lachhmani 1983 (1) Crimes 590 (supra). The learned single Judge has dissented from the view expressed by the Madhya Pradesh High Court. The learned single Judge in paragraph 4 of the judgment, while construing sub-section (2) of Section 125 of the Criminal Procedure Code has observed as under :-

"Considering the object behind Section 125, Criminal Procedure Code, I find it difficult to take a view that the law mandates payment of maintenance allowance normally from the date of the order and payment from the date of application is made only exceptional for reasons to be recorded in writing. In this connection, useful reference may be made to the following opt observation - with which I respectfully concur - in the case of Mani v. Esther 1980 K L T 969."

12. We are in agreement with a view taken by the learned single Judge in the case of Sharda (supra). In the present case, the appellant who was constrained to leave the matrimonial home because of ill-treatment, has been living with her parents since then. She has no source of income and she is unable to maintain herself. The petition for maintenance was pending in the trial Court for nearly four years. During these four years, the appellant was required to depend upon her parents for her maintenance although the respondent has been gainfully employed in J.K. Chemicals Ltd. and he was under obligation to maintain his wife. Having failed and neglected to maintain his wife who was unable to maintain herself, in our opinion, in a case of this nature the wife would be entitled for maintenance from the date of application. It is, however, open to the contesting respondent to prove otherwise. Thus, in our opinion, in the present case, the appellant would be entitled to recover maintenance from the respondent from the date of application i.e. 4th September,

1986. As regards the quantum, we maintain the amount of Rs. 300/- p.m. towards maintenance.

13. Shri Salvi, learned Counsel for the respondent, however urged that having regard to the financial position of the respondent, he may not be able to pay in lump sum the entire decretal amount towards the past maintenance. He therefore urged that the suitable instalments may be granted. Having heard the counsel for parties and having regard to the facts and circumstances of the case, we direct the respondent to pay Rupees 300/- p.m. towards the arrears of maintenance from 4th September, 1986 till 10th August, 1990 in addition to an amount of Rs. 300/- p.m. payable under the impugned order. Such payments to start from April, 1993 until all the arrears are wiped out. We are told at the bar that the respondent is in arrears of maintenance from the last six months, as payable under the impugned order. If the respondent is in arrears of payment, he shall clear the same within four weeks from today and shall continue to pay the maintenance on or before 15th day of each calendar month. In the event of any two defaults, the appellant will be entitled to execute the order for arrears of maintenance.

14. In the result, appeal succeeds, the impugned order is modified to the limited extent with a direction that the respondent shall pay a sum of Rs. 300/- p.m. to the appellant from the date of application i.e. 4th September, 1986 in the manner set out hereinabove. In the circumstances of the case, there will be no order as to costs. Certified copy expedited.

15. Appeal allowed.