



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

**FAMILY COURT APPEAL NO. 57/2024
WITH
FAMILY COURT APPEAL NO. 58/2024
AND
CRIMINAL REVISION APPLICATION (REVN) NO. 194/2024**

FAMILY COURT APPEAL NO. 57/2024

Sahil Sanjay Rathod,
Aged about 33 years, Occ.
Business and Agriculture,
Resident of Tilakwadi, in front
of Tarak Hospital, Yavatmal,
Taluka and District Yavatmal

.....APPELLANT(S)

// VERSUS //

Swati Sahil Rathod,
Aged about 31 years, Occ.
Housewife, Resident of
Shubham Colony, Plot No. 27,
Lohara Waghapur Bypass Road,
Yavatmal, Taluka and District
Yavatmal

.....RESPONDENT(S)

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FAMILY COURT APPEAL NO. 58/2024

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.....RESPONDENT(S)

.....
Shri R.R. Deo, Advocate for the Appellant/Applicant(s)
Respondent in person
.....

CORAM : M.S. JAWALKAR & M.W. CHANDWANI, JJ.
CLOSED FOR JUDGMENT ON :- DECEMBER 11, 2025
JUDGMENT PRONOUNCED ON :- JANUARY 09, 2026

JUDGMENT:- (PER:- M.S. JAWALKAR, J.)

. ADMIT. Heard finally by consent of learned Counsel
for the Appellant and the Respondent in person.

(2) By all these matters, the Appellant – Husband is
challenging the common judgment and order dated 30/08/2024
passed by the learned Judge, Family Court, Yavatmal in Petition
No. A-126/2022 (for restitution of conjugal rights), Petition
No. C-4/2022 (for maintenance under Section 18 of the Hindu

Adoptions and Maintenance Act, 1956) and Petition No. E-74/2022 (for maintenance under Section 125 of the Code of Criminal Procedure, 1973) filed by the Respondent – Wife by which all the Petitions were allowed, the Respondent – Wife was directed to resume cohabitation with the Appellant – Husband and the Appellant – Husband was directed to pay maintenance of Rs. 20,000/- per month to the wife in each Petition for maintenance.

(3) Since Family Court Appeal No. 57/2024 is treated as main matter, the facts and contentions stated in the said Appeal are set out for adjudication of the issues involved in all the matters and they are being decided by this common judgment.

(4) The facts giving rise for filing of the present matters are as under:-

(5) The Appellant is the husband of the Respondent. Their marriage was solemnized on 24/05/2021 as per the Hindu Rites and Customs in Yavatmal. For sake of convenience, the parties are referred to as, "husband" and "wife". It is the contention of the husband that after residing peacefully at the

matrimonial house for a very brief period, the wife started harassing the husband and his family members. On 30/09/2022, the wife filed a Petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 before the learned Judge, Family Court, Yavatmal bearing Petition No. A-126/2022. On 23/01/2023, the husband refuted all the allegations made in the Petition by filing a comprehensive reply-cum-written statement. Two weeks prior to the institution of the aforesaid Petition, the wife had lodged an FIR bearing Crime No. 187/2022 at the local Police Station for the offence punishable under Section 498-A read with Section 34 of the Indian Penal Code, 1860. The husband preferred Criminal Application (APL) No. 1436/2022 for quashing of the said FIR in which, this Hon'ble Court, by the order dated 20/10/2022, issued notices to the Respondents and granted interim relief by directing not to file final report against the husband.

(6) It is the contention of the husband that the wife had attempted to harass him by instituting multiple proceedings claiming multiple reliefs against him and his family members. Apart from the DV proceedings, the wife had also preferred a

Petition bearing No. C-4/2022 for grant of maintenance under Section 18 of the Hindu Adoption and Maintenance Act, 1956, which was in addition to the Petition filed for grant of maintenance under Section 125 of the Code of Criminal Procedure, 1973. Since the wife had broadly made common allegations against the husband in all the proceedings, by the order dated 09/02/2023, the learned Judge, Family Court directed that the Petitions for maintenance be tagged along with the Petition for restitution of conjugal rights.

(7) It is further contended that the wife had suppressed that she was running a private teaching institute, which generated substantial income, which is evident from a matrimonial register published in the year 2020, which was placed on record before the learned Judge, Family Court. She had further suppressed that she was suffering from physical disability, which is evident from the response filed under the Right to Information Act, 2005 along with the disability certificate. On 30/08/2024, the learned Judge, Family Court, Amravati allowed all the Petitions filed by the wife. The said

order dated 30/08/2024 is the subject matter of challenge in the present matters.

(8) Learned Counsel for the Appellant - Husband submitted that the learned Judge, Family Court has failed to appreciate that the wife had concealed her physical condition and source of income and granted an exorbitant sum as maintenance to the wife on a mere surmise or guesswork. The wife had made false allegations against the husband and his family members in all the proceedings filed by the wife. It is contended that the wife, by her own, left the matrimonial house after creating a ruckus. The findings recorded by the learned Judge, Family Court is totally erroneous, perverse and contrary to the factual position, and hence, the common impugned judgment and order dated 30/08/2024 passed by the learned Judge, Family Court, Yavatmal is liable to be quashed and set aside.

(9) Learned Counsel for the Appellant – Husband, in support of his contentions, relied on the following citations:-

(a) Anil Yashwant Karande vs. Mangal Anil Karande, (2016) 2 Mh.L.J. 166;

- (b) Lawrence Philimone Daniel vs. Pranali Lawrence Daniel, 2022(2) Mh.L.J. 415; and
(c) K. Shrinivas Rao vs. D.A. Deepa, (2013) 5 SCC 226;

(10) On the contrary, the Respondent - Wife, who is appearing in person, denied the contentions of the husband made in the present matters. She submitted that she left her matrimonial house for preparation of her Master of Engineering examination, after which, she attempted to return, but her husband and his family members refused to take her back. She always intended to cohabit with her husband, despite the past incidents of cruelty meted out to her. She further submitted that she is not disabled. As the allegation of disability is baseless and does not amount to permanent incapacity affecting marriage obligation, the disability certificate was not accepted to be true by the learned Family Court. Even assuming for the sake of argument that the Respondent - wife's eyes were impaired, which is not a fact, it cannot be considered as a permanent disability to claim divorce or make other allegations.

(11) It is submitted that the Respondent - Wife has fully disclosed her assets and liabilities by way of affidavit before the

Family Court and had not concealed anything. It is submitted that the phone number of the wife and all social media accounts were blocked by the husband and his family members after 16/08/2021. Moreover, the jewelries of the wife worth Rs. 1 lakh are with Anutai Bhopidas Rathod, grandmother of the Appellant - Husband.

(12) It is further submitted that the husband is working as a Professor in the Vasantao Naik Secondary and Higher Secondary School, Lalkheda, Taluka Dharwad, District Yavatmal and is earning Rs. 1 to 1.5 lakhs per month. However, the husband has admitted in the cross-examination before the learned Judge, Family Court, Yavatmal that he is earning Rs. 5 lakhs per year. Considering the income and assets and liabilities of the husband, the learned Family Court has granted just and proper maintenance to the wife. She supports the impugned judgment and order of the learned Judge, Family Court and submitted that the said judgment is fully reasoned and does not warrant any interference, and hence, prays that the Appeals and Revision filed by the husband be dismissed with costs.

(13) The Respondent - Wife, in support of her contentions, relied on the following citations:-

- (a) **Manish Jain vs. Akansha Jain, (2017) 15 SCC 108;**
- (b) **Indra Sarma vs. V.K.V. Sarma, (2013) 15 SCC 755;**
- (c) **Rina Kumari @ Rina Devi @ Reena vs. Dinesh Kumar Mahto, 2025 INSC 55;**
- (d) **Mohd. Abdul Samad vs. The State of Telangana & another, 2024 INSC 506 (Criminal Appeal No. 2842/2024);**
- (e) **Rajnish vs. Neha & another, (2021) 2 SCC 324;**
- (f) **S.P. Chengalvaraya Naidu vs. Jagannath, AIR 1994 SC 853; and**
- (g) **ABC vs. XYZ, 2025 INSC 129.**

(14) Heard both the parties at length, perused the common impugned judgment and order passed by the learned Judge, Family Court, Yavatmal and considered the citations relied on by both the parties.

(15) It is an admitted fact that the marriage between the husband and wife was solemnized on 24/05/2021 at Yavatmal. Out of the said wedlock, there is no issue. The main grievance of the wife was that she had resided with the joint family and the

grandmother of the husband used to harass her mentally and used to taunt and insult her. On 16/08/2021, she left her matrimonial house for pursuing her education. After her examination, she had expressed her desire to resume cohabitation with her husband, however, her husband refused to resume cohabitation with her.

(16) As against this, the contention of the husband was that the wife was not happy because her marriage was solemnized against her will and she wanted to make her career. She has 40% disability. However, this fact was suppressed by the wife. The wife used to give threat of commission of suicide. Though she left the matrimonial house on 16/08/2021 along with her maternal uncle, she lodged report with the Police Station on 12/07/2022 for no valid reason. The wife filed Petition No. C-4/2020 and claimed maintenance of Rs. 1 lakh per month under Section 18 of the Hindu Adoptions and Maintenance Act, 1956. In this Petition for grant of maintenance, based on the other contentions, both the parties denied their income as claimed. There is one Petition bearing No. E-74/2022 for grant of maintenance under Section 125 of the Cr.P.C. In the said

Petition, the wife claimed Rs. 50,000/- per month on the basis of same facts. The husband denied the contentions of the wife.

(17) On perusal of the examination-in-chief of the wife, it appears that she deposed as per her pleadings. Her contention was that all her attempts to resume cohabitation with her husband were failed, so also the orders passed under the DV Act were not followed. In her cross-examination, she has admitted that she has made a wrong statement that she has filed only one application for maintenance. The allegations of cruelty and mental harassment were against the grandmother of the husband. She has also admitted that the grandmother of the husband i.e. Anutai Rathod, is having good reputation and prestige in the society. She held many political positions and people do give respect to her. She has also admitted that said grandmother of the husband might be around 89 years old, when she went to her matrimonial house after marriage. From her cross-examination, it reveals that on 16/08/2021, she along with her parents and maternal uncle, who was a Police Inspector at Wadgaon Police Station, returned back to her parents' house along with her clothing and other articles. She also admitted that

on 15/08/2021, she gave a phone call to her parents and asked them to come to her matrimonial house. As there was examination of Master of Engineering, she went to her parents' house.

(18) Though she deposed that, thereafter, she along with her grandfather went to the matrimonial house on 03/10/2021 on her own, there is no pleading to that effect. She has also admitted that till filing of the various Petitions, she has not given any notice for cohabitation to her husband. It also reveals from Paragraph No. 26 of her evidence, that if the husband would have shown willingness to cohabit with the wife, there was no reason to lodge a criminal complaint against the husband or his relatives. In her cross-examination, she was put to a question that as she was suffering from fever and tonsil, she returned to her parents' house. In answer to this question, she has submitted that as the husband has not taken her to the doctor, she went to her parents' house for treatment. However, this fact is nowhere pleaded in her Petitions, which she has admitted after verifying the contents in the Petitions. She has also admitted in the DV

proceedings that this Court remanded the matter back to the District Judge for reconsideration.

(19) She has also admitted that her first birthday after marriage on 22/07/2021 was celebrated by her husband and family members. Insofar as the maintenance is concerned, the wife has admitted that she is having an account in the State Bank of India since 2011-12, however, she has not mentioned it in her affidavit of assets and liabilities. She has denied that she is running any tuition classes by name "Joy Engineering Classes".

(20) As per the pleadings in the reply of the husband, it is alleged that his wife was career-minded. She was insisting on residing separately from the parents of the husband. After she had left the house, she has posted messages to her husband on WhatsApp on 22/08/2021, 23/08/2021, 01/09/2021 and 07/09/2021. The details of the said WhatsApp messages are given in Paragraph Nos. 4, 5 and 6 of the evidence on affidavit of the husband. After going through the said WhatsApp messages, it appears that the wife had expressed regrets for the situation & for her behaviour. It was her expectation that her husband

should come to take her back. From all these messages, one fact is clear that she was not harassed by any of the family members, but what is probable is that she wanted to pursue her studies further. Therefore, she left her matrimonial house.

(21) From the perusal of the evidence, it reveals that nobody has forced the wife to leave her matrimonial house. So far as her contention that she has made attempts to resume cohabitation with her husband is concerned, the same is not established, as there was no pleading to that effect. The FIR was lodged after 11 months wherein the allegations were made against the family members, which are not there in any of the WhatsApp messages. Even in the FIR also, she has not mentioned anywhere that she attempted to resume cohabitation before lodging of the FIR.

(22) It is also admitted by the wife that she was possessing two SIM cards, and it was not established that both the cards were blocked by the husband. From the admission of the wife that she would not have lodged the complaint in the Police Station if the husband would have consented for cohabitation,

clearly goes to show that the allegation made in the said complaint is an afterthought. There was no allegation against the husband. The learned Judge, Family Court has not properly appreciated the evidence on record and gave weightage to the evidence of the wife. If the WhatsApp messages are read, the wife has clearly expressed regrets for her behavior in many words. However, the learned Judge, Family Court only referred the said WhatsApp messages as her love and affection towards her husband. The WhatsApp messages are at Exhibit 139. There are specific questions put to the wife and she has admitted that she has two SIM cards. The learned Judge, Family Court observed in Paragraph No. 37 of the impugned judgment and order as under:-

“37. If the initial withdrawal from the company of the another spouse was with consent, but later on the spouse denied the opportunity to rejoin or reconcile without a valid reason, it can be stated that the withdrawal is now without any reasonable excuse. On 16/08/2021 the petitioner had gone to her parental home for her studies of Master of Engineering and her examination was scheduled in September-2021, but thereafter she was not allowed to rejoin the company of the respondent.....”

(23) However, the learned Judge, Family Court failed to appreciate that there is no pleading to the effect as to what steps the wife has taken for resuming cohabitation. As she left the matrimonial house on her own for examination, she ought to have returned back after the examination was over, but for a long period of 11 months, no attempts were made by her. On the contrary, she has lodged an FIR after 11 months of cruelty and harassment at the hands of the family members of the husband.

(24) Learned Counsel for the Appellant – Husband, in support of his contention that if a false criminal complaint is preferred by either of the spouse, it would constitute matrimonial cruelty, relied on the judgment in **Anil Yashwant Karande (supra)**. This Court in the said judgment, held in Paragraph No. 38 as under:-

“38. The Supreme Court as well as this Court in the aforesaid judgments have consistently held that if the false criminal complaint is preferred by either spouse it would invariably and indubitably constitute matrimonial cruelty, such as would entitle the other spouse to claim a divorce. In my view, the respondent having filed a false complaint alleging offence under section 498-A, 323, 504 and 506 of IPC in which the

appellant and his family members were acquitted and thus the appellant was entitled to seek divorce on the ground of cruelty under section 13(1)(i-a) of the Hindu Marriage Act.”

(25) Learned Counsel for the Appellant - Husband placed reliance on the judgment in **Lawrence Philimone Daniel (supra)** wherein this Court, in Paragraph No. 10, held as under:-

“10. The perusal of the provision would show that before granting the decree of restitution of conjugal rights, the Court must be satisfied of the truth of the statements made in the petition that either the husband or wife has, without reasonable excuse withdrawn from the society of the other. In other words, if the Court is satisfied that there is reasonable excuse to withdraw either by the husband or wife from the society of other then, it would be very difficult for the Court to record satisfaction with regard to the truth of the statement made in the petition.....”

(26) If at all the wife left for her studies on 16/08/2021, and till filing of the FIR, she was residing with her parents, there is no any question of any cruelty and harassment, as there was

no allegation during this period of any cruelty or harassment. On the contrary, the WhatsApp messages of the wife show that she asked to forgive for her behavior. Though she has stated that she along with the grandfather on her own went to the house of the husband, however, she has admitted that there is no reference of this fact in any of the Petitions. Moreover, her admission that she could not have filed a criminal complaint if the husband would have consented for cohabitation clearly goes to show that the FIR was lodged simply to pressurize the husband and his family members.

(27) Learned Counsel for the Appellant – Husband also placed reliance on the judgment in **K. Shrinivas Rao (supra)** wherein the Hon'ble Apex Court held that making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse, which would warrant grant of divorce.

(28) The Respondent – Wife, in support of her contention that the wife's education/ability to earn does not negate entitlement to maintenance, relied on the judgment in **Manish Jain (supra)**, wherein the Hon'ble Apex Court, in Paragraph No. 15, held as under:-

“15. An order for maintenance pendente lite or for costs of the proceedings is conditional on the circumstance that the wife or husband who makes a claim for the same has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding. It is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife’s parents is also immaterial. The Court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual situation; the Court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the Court.”

(29) In our considered opinion, in the matter before the Hon'ble Apex Court, there was an issue of maintenance in *pendente lite*. In the present matter, it has already been granted along with the cost of litigation.

(30) The Respondent - Wife also placed reliance on the judgment in **Indra Sarma (supra)** in support of her contention that coercion or family pressure preventing cohabitation is relevant for Section 9 of the Hindu Marriage Act. As already discussed, the wife herself left her matrimonial house to pursue her post-graduation in engineering. However, there is nothing on record, so also in the pleading that she has made any attempt till filing of the FIR to return back to her matrimonial house. So far as the judgment relied on by the wife in **Rina Kumari (supra)** is concerned, the same is not applicable in present set of facts. In fact, in present matter, there was no just cause not to return to the matrimonial house after her examination was over. Till filing of the criminal complaint, there were no efforts made by the wife on record, nor there are any pleadings about the said attempts to resume cohabitation with her husband. It is also not established that the grandmother of the husband, in any way,

influenced or insisted to the husband not to resume cohabitation with the wife.

(31) Insofar as the maintenance is concerned, in our considered opinion, the learned Judge, Family Court, Yavatmal has not appreciated the evidence in its proper perspective. It is the contention of the husband that the wife is running tuition classes named as “Joy Engineering Classes” and he has duly established that the phone number for contact which was given in the advertisement is admittedly the phone number of the wife. The wife has admitted that she has two sim cards having numbers 8446651821 and 9359564611 respectively. The former number is reflected in the advertisement of the Joy Engineering Classes, although she has denied that she has Joy Engineering Coaching Institute. She has also denied that her maiden name is ‘Swati Vilas Jadhav’, however, the same is reflected in the matrimonial register published in the year 2020 as well as in the mark-lists of her degree course and the disability certificate are placed on record. The learned Judge, Family Court has not given any consideration to this piece of evidence and also not considered that the wife was having an account in the State

Bank of India. She has not mentioned it in her affidavit of assets and liabilities.

(32) In our considered opinion, the grant of maintenance to the extent of Rs. 20,000/- per month is on the basis of insufficient evidence. In view of the above discussion, the common judgment and order dated 30/08/2024 passed by the learned Judge, Family Court, Yavatmal in Petition No. A-126/2022 on Exhibit 163, Petition No. C-4/2022 on Exhibit 28 and Petition No. E-74/2022 on Exhibit 35 are liable to be quashed and set aside. The matters are required to be remanded back to learned Judge, Family Court, Yavatmal for fresh consideration to the extent of maintenance.

(33) Hence, we proceed to pass following order:-

ORDER

(a) The Family Court Appeals and Criminal Revision Application are **partly allowed**.

(b) The common judgment and order dated 30/08/2024 passed by the learned Judge, Family

Court, Yavatmal in Petition No. A-126/2022 on Exhibit 163 is hereby quashed and set aside.

(c) Insofar as the common judgment and order dated 30/08/2024 passed by the learned Judge, Family Court, Yavatmal in Petition No. C-4/2022 on Exhibit 28 and Petition No. E-74/2022 on Exhibit 35 is concerned, the same is also hereby quashed and set aside, however, the matters are remitted back to the learned Judge, Family Court, Yavatmal to decide the same afresh by directing the parties to file fresh affidavits of assets and liabilities, as on today.

(d) The payments already made towards the maintenance is not recoverable from the wife, however, the learned Judge, Family Court, Yavatmal is directed to reconsider the claim of maintenance by calling upon the parties to file fresh affidavits of assets and liabilities. Both the parties are at liberty to rely on additional evidence, if any, and their respective citations to the extent of grant of maintenance.

The Family Court Appeals and Criminal Revision Application stand **disposed of** in the above terms. Pending Application(s), if any, stand(s) **disposed of**.

(M.W. CHANDWANI, J.)

(M.S. JAWALKAR, J.)