

**(2010) 09 GUJ CK 0067**  
**In the Gujarat High Court**

**Case No :** Criminal Revision Application No. 191 of 2009

Chetanbhai Navnitbhai Vyas

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

**Date of Decision :** 30-09-2010

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 125(4), 498A

**Citation :** (2010) 09 GUJ CK 0067

**Hon'ble Judges :** Akil Kureshi, J

**Bench :** Single Bench

**Advocate :** N.M. Kapadia, for the Appellant; C.M. Shah, APP for Respondent No. 1 and J.M. Malkan, for Mukesh B. Dave, for the Respondent

## **Judgement**

Akil Kureshi, J.—Petitioner is husband of respondent No. 2. Respondent No. 2 wife had filed an application for maintenance before the Judicial Magistrate, First Class, Junagadh being Criminal Misc. Application No. 748 of 2004. The learned Magistrate by his judgment dated 16.12.06 dismissed the application holding that the wife had deserted the husband and was residing voluntarily at her parents house and she was, therefore, not entitled to any maintenance. The wife thereupon filed Criminal Revision Application before the Sessions Court. The learned Additional Sessions Judge by the judgment and order dated 22.1.2009 reversed the judgment of the learned Magistrate and remanded the proceedings for computation of maintenance. It is this order which the husband has challenged in the present Revision Application.

2. Counsel for the petitioner vehemently submitted that the evidence on record conclusively proves that the wife had deserted the husband and she was not willing to reside with the petitioner. She was, therefore, not entitled to any maintenance. He referred to Sub-section (4) of Section 125 of the Criminal Procedure in this regard. He also referred to a decision of the Apex Court in the case of Deb Narayan Halder Vs. Smt. Anushree Halder,

3. On the other hand, learned Counsel appearing for the respondent wife

opposed the petition contending that there was sufficient evidence on record on the basis of which the learned Sessions Judge reversed the decision of the Magistrate.

4. Both sides referred to the evidence on record. Upon perusal of such evidence, I find that the wife in her deposition before the Magistrate clearly stated that for first five years of marriage, she was treated properly by her husband and thereafter upon instigation by other family members, harassment started and when her son Dipen was barely eight months only, in the guise that she needs to take medicine, she was dropped at her parents house and infant son was snatched away from her. She had made several attempts for settlement. However, there was no response from the husband. She also stated that that if proper assurance to keep her well is given, she would be willing to go with her husband. She further stated that the husband is managing Ram temple in the village and earns Rs. 25,000 to Rs. 30,000/- from such occupation. His father is a retired pensioner and receiving substantial pension.

5. The husband in his deposition stated that he earns only Rs. 1000/- as honorarium from his part-time engagement in Salt Workers Center. The wife had left behind young son. He never used to ill-treat her. He further stated that the way in which the wife had left, he would not be willing to take her back since he apprehends that she would commit suicide. He denied the suggestions of other sources of income.

6. The husband also examined his uncle Gunvantrai at Ex.30 who mainly deposed that he had been party to several attempts to bring about settlement which did not materialize. Husband also examined two more witnesses, one Harsukhbhai Ex.29 and Bipinbhai Ex.36, in support of his version that the wife had deserted. These witnesses have, however, no personal knowledge. Their depositions, therefore, throw no light on this aspect. Husband also examined one Prakashkumar Pandya, Ex.35 to show that his father earns pension of Rs. 4200/- p.m.

7. From the evidence on record, it clearly emerges that the wife had shown her willingness to go back to her matrimonial home if the husband was prepared to treat her well. On the other hand, the husband had flatly refused to take her citing the reason that he apprehends that she would commit suicide. However, this voicing of apprehension regarding suicide came only as an explanation to the denial to take the wife back. Nowhere previously before the court or any authority or in any correspondence did he ever voiced such apprehension. To my mind, therefore, the learned Magistrate was not justified in drawing the conclusion that the wife had deserted the husband. The findings of the learned Magistrate were therefore correctly interfered with by the learned Additional Sessions Judge. In exercise of revisional powers, I find no error in appreciation of evidence by the Sessions Court. No interference is therefore called for.

8. Counsel for the petitioner, however, submitted that in the complaint filed by the wife for offence u/s 498A of the Criminal Procedure Code she had stated that she left the house under an apprehension of further harassment whereas in the proceedings for maintenance, she stated that she was sent to her parents house. It may be noted that maintenance proceedings are not penal proceedings and nature of proof required cannot be put on the same pedestal as a criminal trial. Minor discrepancy about her leaving the house would not frustrate her claim for maintenance if otherwise there is evidence on record to suggest that she was not responsible for deserting the husband without sufficient reasons. In any case, it is her deposition before the court which is the substantive piece of evidence and not the contents of the complaint.

9. I was inclined to decide the quantum of maintenance payable to the wife here only to avoid further protraction of proceedings. Counsel for the petitioner, however, insisted that the direction of the Sessions Court being one of remanding the proceedings for fixing the maintenance to the learned Magistrate, the same may be maintained. While accepting the said submission as technically correct one, I cannot lose sight of the fact that the wife is not receiving any maintenance since years. Therefore, while holding that the wife is entitled to maintenance from the husband and upholding the decision of the Sessions Court in this regard and permitting the learned Magistrate to fix the maintenance as expeditiously as possible, it is directed that the petitioner shall pay interim maintenance of Rs. 1500/- per month to the wife from the date of this order till final disposal of the remand proceedings.

10. With the above observations and directions, the revision application is rejected. Rule is discharged.