

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 6 OF 2014

Abdul Munaf Khan s/o Hasham Khan ... **Applicant**
Age 61 years, Occupation: Nil
R/o Lne No.25, New Baijipura,
Indiranagar, Aurangabad.

VERSUS

1. Aref Khan s/o Abdul Munaf Khan
Age 22 years, Occu: Private Service
R/o c/o Rahimunnisa Begum, Near Brick
Kiln, Misarwadi, Naregaon, Aurangabad.

2. Inayatkhan s/o Abdul Munaf Khan ... **Respondents**
Age 22 years, Occu: Private Service
R/o c/o Rahimunnisa Begum, Near Brick
Kiln, Misarwadi, Naregaon, Aurangabad.

Mr.S. D. Hiwrekar, Advocate for the petitioner
Mrs. S. M. Surti (Wagh) Advocate for the respondent

CORAM : T. V. NALAWADE &

DATE : 6th July, 2015

JUDGMENT:

1. Rule. Rule made returnable forthwith. By consent, heard both sides for final disposal.

2. The revision is filed to challenge the judgment and order of family Court, Aurangabad given in E. No.221/2012. The proceedings filed under section 125 of the Criminal Procedure Code by the present petitioner, father of respondents, is dismissed by the Family

Court. On the date of the proceedings, age of the present petitioner was given as 59 years. The respondents are his sons. It is contended that first son Arifkhan is in private service, his monthly earning is Rs.20,000/- and second son Inayatkhan is running grocery shop and earns more than Rs.25,000/- per month. It is the case of the petitioner father that the sons are having their own house and they can afford to pay maintenance of Rs.5000/- per month to him. It is his case that he is not able to maintain himself and he cannot work due to age and as he is suffering from illness.

3. The sons contested the matter. They contended that proceeding is filed by the father only to harass them. It is there case that the present petitioner, father had not taken care of their mother and also of them and that their mother was required to take shelter in the house of her parents. They contended that though the mother had filed proceedings for maintenance and in the said proceedings maintenance was granted in her favour and the two issues (respondents), no provision was made by the present petitioner for their maintenance and ultimately the mother was required to compromise the matter. The submissions made show that in the past, maintenance of Rs.500/- per month was granted in favour of the first wife of the petitioner and @ Rs.400/- per month in favour of two sons-respondents.

It is the case of the present respondents that the present petitioner has two more sons from second wife and each of them is earning Rs.15,000/- per month. It is contended that they can maintain the present petitioner. It is the case of the respondents that they are required to maintain their mother. It was submitted that respondent No.1 is married and is required to maintain his wife and issues and respondent no.2 is required to maintain his wife as he got recently married.

4. Before the Family Court, both sides gave evidence. Record in respect of maintenance proceedings filed against the present petitioner by his first wife and the issues was produced. The Family Court has considered the circumstance like second marriage of the present petitioner and his admission that his sons from second wife are taking some care of him. However, the petitioner has contended that they can be asked to bear half of the expenses and present respondents need to be asked to bear remaining half of the expenses. The Family Court has given much importance to the circumstance that the present petitioner never resided for most of the time with the present respondents and he did not take care of present respondents and their mother. Due to this circumstance, maintenance is refused.

5. No record was produced by the present respondents to prove

that the present petitioner is able to work or he has source of income to maintain himself. Though it can be said that other two sons of the present petitioner are also liable to maintain him, the responsibility to maintain the petitioner needs to be shared by the present respondents also. Defence that in the past the father had not discharged his parental obligation cannot be considered in the proceedings like present one. This point is considered and decided by this Court (Division Bench) in the case reported in **1980 CRI. L.J. 256 (Pandurang Baburao Dabhade Vs. Baburao Bhauroo Dabhade and others)**. Thus, the defence on the basis of which maintenance is refused to the present petitioner is not available to the present respondents.

6. Considering the status of the parties and aforesaid circumstance and the possibility that any labour can earn at least Rs.4000/- per month by doing hard work, this Court holds that each of the son can give Rs.600/- per month for the maintenance of the petitioner, father. Thus, the Court holds that the judgment and order of family Court cannot sustain in law.

7. In the result, Criminal Revision Application is allowed. Judgment and order of Family Court in E. No.221/2012 (Exh.28) is hereby set aside and the Application for maintenance is allowed.

8. Present respondent Nos. 1 and 2 do pay maintenance of Rs.600/- each to the present applicant father. The maintenance will be payable from the date of filing of the proceedings.

9. Rule is made absolute in the aforesaid terms.

(T. V. NALAWADE, J.)

JPC