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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 59 OF 2015

Mr.Rajendra Kumar Malhotra

.. Petitioner

Vs.

Mrs.Krishna Manoharlal Malhotra and others

.. Respondents

Mr.R.Satyanarayanan a/w Mr.Arjun Prabhu, Advocate for the
Petitioner.

CORAM : R.G.KETKAR, J.

DATE : 16th February, 2015

P.C. :

. Heard Mr.R.Satyanarayanan, learned Counsel for the
petitioner at length.

2. By this petition under section 397 read with section 401
of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') the
petitioner has challenged the judgment and order dated 29/11/2014
passed by the learned Judge, 4th Family Court, Mumbai below Exhibit
14 in Petition No. E-385 of 2013. By that order, the Family Court held
that it has jurisdiction to entertain and try the application filed by the
respondents No. 1& 2 under section 125 of the Cr.P.C.and rejected the
application Exhibit 14 taken out by the petitioner with costs of
Rs.10,000/-.

3. In support of this petition, Mr.Satyanarayanan submitted
that respondents No.1 & 2 instituted proceedings under section 125 of

Cr.P.C. in the Family Court at Bandra, Mumbai. The petitioner is ordinary resident of Kharghar, District Raigad. In other words, the petitioner does not reside within the territorial jurisdiction of the Family Court, Mumbai. He submitted that application filed by respondents No.1 & 2 claiming maintenance has to be filed where the petitioner from whom the maintenance is claimed, is living. Respondents No.1 & 2 last resided with petitioner at Kharghar, District Raigad. He invited my attention to section 126 of Cr.P.C as also the decision of the Apex Court in the case of *Vijay Kumar Prasad Vs. State of Bihar*, **AIR 2004 Supreme Court 2123** and in particular paragraphs 3, 8 to 15 thereof. He, therefore, submitted that the Family Court committed serious error in holding that it has jurisdiction to entertain and try the proceedings. In any case, the Family Court committed error in imposing costs of Rs.10,000/- more so, when the petitioner is agitating a pure question of law.

4. I have considered the submissions advanced by Mr.Satyanarayanan. I have also perused the material on record. It is not in dispute that respondents No.1 & 2 are staying at Kurla and petitioner is staying at Kharghar which is not within territorial jurisdiction of the Family Court, Bandra, Mumbai. It is equally not in dispute that the petitioner is working at Andheri (East) which is within the territorial jurisdiction of the Family Court, Bandra, Mumbai. The Family Court has considered this aspect in paragraph 5 of the

impugned order. It was noted that the petitioner is residing at Kharghar and serving at Andheri. All the way he comes from Kharghar to Andheri for his service and returns from Andheri to Kharghar at his home daily. It was also observed that in case of grant of application for maintenance, the execution will be taken at place where he earns so as to facilitate the attachment of salary. Though he physically stays at Kharghar, he spends more time in the jurisdiction of the Family Court. The Family Court also dealt with the decision of the Apex Court in the case of **Vijay Kumar Prasad** (*supra*).

5. In that case, respondent No.2- father had filed application under section 125 of Cr.P.C. in the Court of Chief Judicial Magistrate, Siwan. The appellant filed an application for transfer of the case from Siwan to Patna alleging that an influential politician was behind the litigation and he would not get justice if the case is tried at Siwan as he could not even arrange a lawyer to represent him. According to him, the Court at Siwan has no jurisdiction to entertain the application because he lives in Patna and is practicing as a lawyer. The Apex Court considered provisions of section 126 (1) which read as under:

126. Procedure. –

(1) Proceedings under section 125 may be taken against any person in any district-

(a) where he is, or

(b) where he or his wife, resides, or

(c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.

6. In paragraph 13, it was observed that clauses (b) & (c) of sub-section (1) of section 126 relate to the wife and the children under section 125 . The benefit given to the wife and the children to initiate proceeding at the place where they reside is not given to the parents. A bare reading of the section makes it clear that the parents cannot be placed on the same pedestal as that of the wife or the children for the purpose of section 126. In paragraph 15, it was observed thus :

As has been noted in Jagir Kaur's case (supra) the expression "is" cannot be given the same meaning as the word "reside" or the expression "the last resided". It connotes in the context the presence or the existence of the persons in the district where the proceedings are taken. It is wider in its concept than the word "resides" and what matters is his physical presence at the particular point of time. No finding has been recorded by the High Court on this particular aspect which needs a factual adjudication. The stand of the appellant is that he practises in Patna and was not present in Siwan physically when the application was filed for maintenance. Respondent No. 2- father has indicated about the son practising in the Patna High Court. Obviously if his son was practising at the time of presentation of petition in the Patna High Court, he could not have been physically present at Siwan, whatever extended meaning may be given to the expression "is". In view of this the position is clear that the Court at Siwan has no jurisdiction to deal with the petition. One thing may be noted, which can clear lot of cobwebs of doubt. The expression "is" cannot be construed to be a fleeting presence, though it may not necessarily for considerable length of time as the expression "resides" may require. Although the expression normally refers to the present, often it has a future meaning. It may also have a past signification as in the sense of "has been". (See F.S. Gandhi (Dead) by LRs. V. Commissioner of Wealth Tax, Allahabad (AIR 1991 SC 1866). The true intention has to be contextually culled out.

7. Perusal of paragraph 15 extracted hereinabove shows that the Apex Court considered its earlier decision in the case of *Mst.Jagir Kaur and another Vs. Jaswant Singh* AIR 1963 SC 1521 and observed that the expression “is” cannot be given same meaning as the word “reside” or expression “the last resided”. **It connotes in the context the presence or the existence of the persons in the district where the proceedings are taken. It is wider in its concept than the word “resides” and what matters is his physical presence at the particular point of time.**

8. In the present case, the Family Court has given categorical finding in paragraph 5 of the impugned order that the petitioner though is residing at Kharghar is working in Andheri (East). In other words, the presence or the existence of the petitioner in the district viz Mumbai Suburban District where the proceedings are taken is evident from the record.

9. In view of paragraph 15 of the decision of the Apex Court in the case of **Vijay Kumar Prasad** (*supra*), I do not find that the Family Court committed any error in holding that it has requisite jurisdiction to entertain and try the application. The Family Court also noted that in case of grant of application for maintenance, the execution can be taken at place where the petitioner earns so as to facilitate for attachment of salary.

10. Mr.Satyanarayanan further made grievance that the petitioner was agitating purely a legal point and the Family Court was not justified in imposing costs, that too Rs.10,000/-. In paragraph 5, the Family Court recorded that the petitioner was directed to undergo mediation, but for the reasons known to the parties, the mediation efforts failed. It is material to note that respondent No.1 is 78 years old and respondent No. 2 is 65 years old. They are parents of the petitioner. They have instituted proceedings under section 125 in the year 2013. The petitioner could have come forward with a settlement proposal. Instead of resolving the matter amicably, the petitioner has raised objection to the jurisdiction based on the decision of the Apex Court in the case of **Vijay Kumar Prasad** (*supra*), which in my opinion, is in favour of respondents No.1 & 2, I therefore, do not find that the Family Court committed any error in imposing costs of Rs.10,000/-, even though, petitioner was agitating purely a legal point. Hence, petition fails and the same is dismissed.

(R.G.KETKAR, J.)