

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 51 OF 2016

Shaikh Feroz s/o Shaikh Mehmood,
Age: 27 years, Occ: Labourer,
R/o. Saeed Nagar, Bhokar,
Tq. Bhokar, Dist. Nanded.

...Petitioner

versus

1. Fatema Begum @ Rubheena w/o
Shaikh Feroz, Age: 22 years, Occ: Household,
At present Bhusar Lane, Itwara,
Tq. & Dist. Nanded.
C/o. Shaikh Mahemud (lineman)
Ashraf Nagar, Hingoli Gate,
Nanded, Dist. Nanded 431602.

2. Shaikh Hamza s/o Shaikh Feroz,
Age: 2 years, U/g of his real mother
i.e. Respondent No.1.

...Respondents

.....
Mr. V.K. Kazi, Advocate for petitioner
Mr. Quadri Taher Ali, Advocate for respondents
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CORAM : N.W. SAMBRE, J.

DATE : 28th MARCH, 2016

ORAL ORDER :

The present writ petition is by the petitioner, who suffered an order under Section 125 of the Code of Criminal Procedure passed by the Principal Judge, Family Court, Nanded, awarding interim maintenance of Rs.3000/- p.m. and Rs.2500/- p.m. to the respondent wife and son.

2. The said order dated 15/01/2015 is not questioned in the present petition.

3. By filing the application below Exhibit-19 under Section 127 of the Code of Criminal Procedure, the petitioner has sought modification of the order of payment of maintenance ordered under Section 125 of the Code of Criminal Procedure on 15/01/2015 before learned Principal Judge, Family Court, Nanded. The said application under Section 127 of Code of Criminal Procedure came to be rejected on 01/12/2015. As such, present writ petition.

4. Learned Counsel for the petitioner-husband makes two-fold contentions; (a) that the order of awarding maintenance came to be passed without considering the earning capacity of the husband and (b) no opportunity of cross examination was given to the present petitioner. So as to substantiate his contentions, he has relied upon the judgment of this Court in the matter of ***Bhagwan w/o Ramji Kamble vs. Smt. Vaishali w/o Bhagwan Kamble and another*** reported in ***2014 ALL MR (Cri) 2949***.

5. With the assistance, I have perused the contents vide Exhibit-19 moved under Section 127 of the Code of Criminal Procedure Code. Perusal thereof would reflect that the petitioner has come out with the case that he is ready and willing to award

maintenance of Rs.700/- p.m. and Rs.500/- p.m. to the respondent wife and son. The only reason cited for moving the application under Section 127 of the Code of Criminal Procedure is that he has other liability, such as to maintain his 70 years father and 65 years mother. In my opinion, the said fact was very much in existence when earlier occasion, the Family Court passed an order of awarding maintenance on 15/01/2015, same cannot be treated as ground seeking modification of the order dated 15/01/2015 by filing application under Section 127 of the Code of Criminal Procedure.

6. In view of above, in my opinion, the judgment relied upon by the learned Counsel for the petitioner in the matter of ***Bhagwan s/o Ramji Kamble*** (supra) has hardly any applicability to the present case, as in the said case, the issue was whether the effect of divorce which has already granted in favour of the parties, on the proceedings under Section 125 of the Code of Criminal Procedure, though was raised, not considered in the said case.

7. In the above referred background, no case for interference is made out. The petition fails and stands rejected.

[N.W. SAMBRE, J.]