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

CRIMINAL WRIT PETITION NO.405 OF 2016

Milind s/o Nivrutti Kharat
Age : 42 years, Occu. Service,
R/o Satona (Khurd),
Tq. Partur, Dist. Jalna

..PETITIONER
(Original Non-Applicant)

VERSUS

1. Smt. Rani @ Sakshi Milind Kharat,
Age : 30 years, Occu. Household,
R/o C/o Mohan Manik Kamble,
Behind the Court Building,
Phule Nagar, Majalgaon,
Tq. Majalgaon, Dist. Beed
2. Samiksha Milind Kharat,
Age : 10 years, Occu. Student,
Under Guardianship of her mother
i.e. the respondent no.1,
R/o As above
3. Samyak Milind Kharat,
Age : 6 years, Occu. Student,
Under Guardianship of her mother
i.e. the respondent no.1,
R/o As above

..RESPONDENTS
(Original Applicants)

Mr S.J. Salunke, Advocate to for petitioner;
Mr S.B. Ghute, Advocate for respondents

CORAM : N.W. SAMBRE, J.

DATE : 16th August, 2016

ORAL ORDER :

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By the present petition, the petitioner – husband takes an exception to the order dated 27th November, 2015, passed by learned Additional Sessions Judge, Majalgaon, in exercise of revisional jurisdiction, while dealing with an order of maintenance passed under section 125 of the Code of Criminal Procedure.

2. Mr Salunke, learned Counsel appearing on behalf of the petitioner would submit that in view of the provisions of sub-section (2) of section 125 read with sub-section (6) of section 354 of the Code of Criminal Procedure (for short “the Code”) and law laid down by the Apex Court, in the matter of **Jaiminiben Hirenbbhai Vyas & anr. vs. Hirenbbhai Rameshchandra Vyas & anr**, reported in **AIR 2015 SC 300**, the revisional court ought to have framed a specific issue, whether the award of maintenance to the respondents-wife and children will be from the date of application or from the date of the order of the Magistrate. He would then submit that the said law is well settled, in view of the finding recorded by the Apex Court in the said judgment, particularly in paragraphs 7 and 8. As the learned revisional court has not recorded specific reasons for awarding the maintenance from the date of the application, the order impugned is not sustainable and is liable to be set aside by remitting the matter back to the revisional court.

3. Mr Ghute, learned Counsel appearing on behalf of respondents/wife-children would strenuously oppose the petition by pointing out that the order passed by this Court directing the petitioner to

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deposit the arrears of maintenance is not honoured and as such, according to him, since the petitioner lacks *bona fides* as he has no respect for judicial orders, present petition deserves to be rejected. He would then invite attention of this Court to the judgment of the Apex Court, in the matter of **Shail Kumari Devi & anr. vs. Krishan Bhagwan Pathak alias Kishun B. Pathak**, reported in **AIR 2008 SC 3006**, so as to canvass that what is required under section 125 (2) of the Code is a specific order awarding maintenance from the date of the application or from the date of the order and not a specific finding *qua* the award of maintenance from the date as mentioned therein. According to him, the court below has rightly considered all aspects of the matter and has proceeded to record a finding as regards the award of maintenance from the date of the application, which is sufficient compliance and, therefore, petition needs to be rejected. He would then submit that it will be always open for this Court to substitute the reasons, if so desired, for ordering payment of maintenance from the date of the application.

4. Having bestowed my thoughts to the submissions made, it is required to be noted that the Apex Court, while dealing with the similar issue, in the matter of Jaiminiben (*supra*), in paragraph 7 has held that it is neither appropriate nor desirable that a court simply states that maintenance should be paid from either the date of the order or the date of application in the matters of maintenance. The Apex Court, while dealing with the scheme of section 125 (2) read with section 354 (6) of the Code has observed that the court must record the reasons to prevent vagrancy

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and destitution in the society and the court must apply its mind to the options having regard to the facts of a particular case.

5. So far as the law laid down in the matter of Shail Kumari Devi (supra) is concerned, the Apex Court, while dealing with the similar issue, in paragraphs 44, 45, 46 and 47 has observed thus :-

“44. In our considered opinion, the High Court is not right in holding that as a normal rule, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance. And if he intends to pass such an order, he is required to record reasons in support of such order. As observed in K. Sivaram, reasons have to be recorded in both the eventualities. The Court was also right in observing that wherever Parliament intended the Court to record special reasons, care had been taken to make such provision by requiring the Court to record such reasons.

45. Moreover, duration of litigation is not within the power or in the hands of the applicant and entitlement to maintenance should not be left to the uncertain date of disposal of the case. Keeping in view this hard reality, this Court in Savitri held that in absence of prohibition to grant 'interim' maintenance such power could be read in the salutary provision of [Section 125](#) of the Code ensuring maintenance to wife unable to maintain herself during the pendency of proceedings. Even Parliament took into account the reality and by the [Amendment Act, 2001](#) express provision has been made for the purpose.

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46. Again, maintenance is a right which accrues to a wife against her husband the minute the former gets married to the latter. It is not only a moral obligation but is also a legal duty cast upon the husband to maintain his wife. Hence, whenever a wife does not stay with her husband and claims maintenance, the only question which the Court is called upon to consider is whether she was justified to live separately from her husband and still claim maintenance from him? If the reply is in the affirmative, she is entitled to claim maintenance. It is, therefore, open to the Magistrate to award maintenance from the date of application and there is nothing which requires recording of 'special reasons' though he must record reasons as envisaged by sub- section (6) of section 354 of the Code in support of the order passed by him.

47. We, therefore, hold that while deciding an application under [Section 125](#) of the code, a Magistrate is required to record reasons for granting or refusing to grant maintenance to wives, children or parents. Such maintenance can be awarded from the date of the order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary. No special reasons, however, are required to be recorded by the Court. In our Judgment, no such requirement can be read in sub section (I) of [Section 125](#) of the Code in absence of express provision to that effect.”

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6. From the cumulative effect of what has been observed in above referred paragraphs, it could be gathered that the wife gets a right to claim maintenance the moment she marries a man. The Apex Court, while dealing with the issue as regards claim for maintenance under section 125 of the Code has considered, whether the wife was justified in living separately from the husband and whether she can claim maintenance. It is then required to be noted that the Apex Court, in the said matter, particularly in paragraph 46 has observed that the wife is always entitled to claim maintenance and it is open for the Magistrate to award maintenance from the date of application and there is nothing which requires recording of special reasons, though reasons are required to be recorded in support of the order passed by the Magistrate, particularly in view of provisions of section 354 (6) of the Code.

7. Now, this Court is required to consider as to whether the law laid down in the judgment in the matter of Jaiminiben (supra) or in the matter of Shail Kumari Devi (supra), is required to be followed in the facts of the present case.

8. It is not in dispute that the law laid down in the matter of Jaiminiben is after considering the law laid down by the Apex Court in the matter of Shail Kumari Devi. Both these judgments are rendered by the Honourable Apex Court with equal strength of Judges. In such an eventuality, in my opinion, Mr Salunke, learned Counsel appearing on behalf of the petitioner

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is right in pointing out that the later judgment, i.e. the judgment in the matter of Jaiminiben is required to be followed by this Court.

9. Even if the law laid down by the Apex Court, in the matter of Jaiminiben (supra) is to be followed, it is required to be noted that the learned revisional court, while ordering payment of maintenance from the date of the application, has in categorical terms recorded finding in paragraph 17 of the judgment for the award of maintenance, at least the reasons could be located from the said finding.

10. Apart from above, it would be worth to add that the petitioner, who is working as Lecturer in a college is getting substantial salary and has neglected to maintain his wife and children as he has not volunteered to pay any maintenance either after the break-up or from the date of the application, during pendency of the proceedings. It is then required to be noted that though an order of deposit of arrears is made by this Court, the petitioner has not honoured the said order. It is then required to be noted that it is not brought on record as regards the source of income of respondent – wife to maintain herself and her children, though the petitioner has neglected to maintain them. In the above eventuality, in my opinion, learned revisional court was right in awarding maintenance from the date of the application.

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11. In view thereof, petition lacks merit and stands rejected.

(N.W. SAMBRE, J.)

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