IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1700 OF 2007

Isuf Ahmed Naik.] … Petitioner
Versus
1. Nasima Isuf Naik,]
2. State of Maharashtra.] … Respondents

WITH

CRIMINAL WRIT PETITION NO.1734 OF 2007

Isub Ahmed Naik.] … Petitioner
Versus
1. Smt. Fatima Isub Naik,]
2. State of Maharashtra.] … Respondents

None present.

CORAM :- M. S. SONAK, J.
DATE :- JANUARY 15, 2016

P. C. :-

1. Neither the parties nor their Advocates are present. However, considering that these petitions relate to the year 2007, the same is disposed of on merits.

2. Both these petitions can be disposed of by a common Judgment and Order. In Criminal Writ Petition No.1700 of 2007, on 10/06/2009, this Court made the following order :-

> *"Notice has been duly served to the 1st respondent. The learned counsel appearing for the petitioner invited my attention to the affidavit in lieu of examination-in-chief filed by the 1st respondent (original applicant)in support of her application under section 125 of the Code of Criminal Procedure, 1973. The learned counsel appearing for the*

applicant pointed out that the date of birth disclosed by the 1st respondent is 02nd July 1976. Hence, at the time of filing of the application under section 125 her age was about 29 years. The learned counsel appearing for the petitioner has invited my attention to clause (c) of sub-section 1 of section 125 of the said Code of 1973 which provides that a child who has attained majority is entitled to maintenance provided such a child is by reason of any physical or mental abnormality or injury is unable to maintain itself. It is pointed out that except for stating that the 1st respondent is unmarried, no such ground as provided in clause (c) has been made out in the application. The learned counsel appearing for the petitioner pointed out that the present age of the petitioner is more than 72 years and is bedridden. The learned counsel for the petitioner states that petitioner has been regularly paying maintenance to his wife.

2. The 1st respondent has not chosen to appear. Rule. Till the final disposal of the petition, no coercive action shall be taken against the petitioner on account of the non compliance of the impugned order."

3. In Criminal Writ Petition No.1734 of 2007, on 10/06/2009, the order almost identical to the aforesaid order came to be made.

4. From the material on record, it is quite clear that the respondent nos.1 in the two writ petitions are the daughters of the petitioner. At the stage when the said two daughters applied for maintenance under Section 125 of Cr.P.C., they had already attained the age of majority. There are neither any averments nor is any material placed on record to establish that the two respondents, by reason of physical or mental abnormality or injury, are unable to maintain themselves.

5. Section 125 of the Cr.P.C., *inter alia*, provides that any person having sufficient means neglects or refuses to maintain his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, the Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of such a child at such monthly rate as such Magistrate thinks fit, and to pay the same to such a child as the Magistrate may from time to time direct.

6. Therefore, the liability to maintain a child who has attained majority arises upon satisfaction that such a child, by reason of any physical or mental abnormality or injury, is unable to maintain itself. Since the respondent no.1-daughters in both writ petitions, who have obviously attained majority had neither pleaded nor established that they are unable to maintain themselves by reason or any specific abnormality or injury, there was no question of entertaining their petition under Section 125 of the Cr.P.C. On this ground, the impugned orders are liable to be set aside. It is also to be noted that in the year 2007, the petitioner was 72 years old and therefore, by now, over 80 years old. For the aforesaid reasons, Rule is made absolute in both these petitions in terms of prayer clause (b) thereof. However, there shall be no order as to costs.

(M. S. SONAK, J.)