

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 165 OF 2008

Natha s/o Yeshwanta Waghmare
Age. 65 years, Occu. Nil,
R/o. Siranjani, Tq. Himayatnagar,
Dist. Nanded.

...Petitioner

Versus

Anil s/o Natha Waghmare,
Age. 27 years, Occu. Service,
R/o. Krishna Dhupe, Ulhasnagar,
Tarodanaka, Tq. & Dist. Nanded.

...Respondent

.....
Mr. B.N. Gadegaonkar, advocate for the petitioner.
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CORAM : V. K. JADHAV, J.
DATED : 9th OCTOBER, 2017

ORAL JUDGMENT:-

1. Being aggrieved by the judgment and order dated 1.9.2004 passed by the J.M.F.C. Himayatnagar in Misc. Criminal application No. 16 of 2003 and the judgment and order dated 26.10.2007 passed by the Sessions Judge, Nanded in criminal revision petition No. 150 of 2004, confirming thereby the order passed by the Magistrate, the original applicant has preferred this writ petition.

2. Brief facts giving rise to the present writ petition are as follows:-

a) The present petitioner has initiated the maintenance proceeding against the respondent, who is son of the petitioner begotten from his first wife, Shantabai. The first wife of the petitioner viz. Shantabai is having two sons i.e. present respondent and one Sunil. It is the case of the petitioner-original applicant that the children born from his second wife are taking education. The petitioner-original applicant is suffering from some ailments due to old age and is not having any independent source of income, as such, he is unable to maintain himself. The respondent-original non applicant has completed his M.Tech degree and secured the services in a Corporate company on monthly salary of Rs.15,000/- and by doing the overtime, he is getting Rs.22,000/- p.m. The petitioner-original applicant has claimed amount of Rs.3000/- p.m. as maintenance and also for medical expenses.

b) The respondent non applicant has resisted the application on the ground that since 20 years the present petitioner-original applicant has deserted and ill-treated the respondent non applicant, his mother and his brother. The petitioner-original applicant has preformed second marriage with one Vidyabai. From the second wife, the petitioner is having four children. The first is of 22 years and second is of 18 years. The petitioner-original applicant is doing the business of selling chilly and vegetables and earning Rs.3000/-

p.m. He is also cultivating the lands of others on batai basis. It has been also contended that the mother of non applicant i.e. first wife of petitioner-original applicant alongwith younger brother of the non applicant filed application bearing No. 54 of 1996 for grant of maintenance from the petitioner-original applicant and inspite of the maintenance order, the petitioner-original applicant never paid maintenance amount. It has been also contended that the respondent non applicant is not having any source of income. He is unemployed. Both the courts below, by the impugned judgment and orders, dismissed the application of the petitioner-original applicant seeking maintenance. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the learned Sessions Judge in para 11 of the judgment has erroneously observed that the petitioner-original applicant has admitted that he is doing the business of selling chilly in the weekly Bazar. Learned counsel submits that the petitioner original applicant has not given such admission and as such the impugned judgment and order passed by the learned Sessions Judge suffers from perversity. Learned counsel submits that the respondent non applicant has raised specific defence that he was not properly maintained by the petitioner-original applicant. The petitioner-original applicant has not discharged his parental obligation during the childhood of the

respondent non applicant. The petitioner-original applicant has not even taken care of mother of respondent non applicant who happened to be the first wife of petitioner and as such, she constrained to initiate maintenance proceeding alongwith her younger son against petitioner-original applicant. Learned counsel submits that the petitioner-original applicant cannot be punished for his past negligence or failure to maintain respondent-original non applicant. Learned counsel submits that any parent, who is unable to maintain himself or herself and who has a child having sufficient means, can resort to the provision of section 125 of Cr.P.C. for securing the maintenance. The liability of a son to pay maintenance under the above provision is distinct from and independent of the liability of the other children in the family to maintain the parents. Learned counsel for the petitioner in order to substantiate his submissions, placed reliance on the judgment of this Court in the case of ***Mahendrakumar Ramrao Gaikwad vs. Gulabbai w/o Ramrao Gaikwad, reported in 2000 (Suppl.) Bom. C.R. 8.***

4. None present for the respondent original-non applicant.

5. The petitioner-original applicant has initiated the maintenance proceeding against the son born from his first wife. It is pertinent to note that the petitioner is seeking maintenance from the son of his

first wife on the ground that he was required to sell the land for maintaining the children born from his second wife and also on the ground that he has sold out his land for the purpose of paying maintenance to his first wife Shantabai (mother of the respondent non applicant). It is true that it is the obligation of the son to maintain an aged, infirm parent, who is unable to maintain himself or herself and it does not depend upon fulfillment of the parental obligation to maintain and bring up the children during the childhood of the children. The son cannot get rid of paying maintenance on the ground that during his childhood the applicant has not fulfilled his parental obligation and as such he is not liable for maintaining the applicant. However, in the case in hand, the petitioner original applicant is claiming that he is unable to maintain himself because he sold the land to pay the maintenance to his first wife and also he is not able to maintain himself, as four children born from his second wife are taking education. Though the respondent non applicant has raised specific plea that out of four children, two children are major. However, in para 6 of cross examination, the petitioner has given certain admissions. The applicant has admitted that he has kept the sale proceed of the land in the bank.

6. It further appears from the order of maintenance passed in favour of first wife that very meager amount has been awarded as

maintenance. Learned counsel for the petitioner original applicant has also, on instructions, accepted that the said maintenance proceeding came to be settled amicably long back and that is also a part of record. The applicant has further admitted in his cross examination that he used to receive Rs.5000/- per month by selling vegetables and chilly. The witness No.2 of the applicant has also admitted in his cross examination that the applicant used to sell chilly at Umarkhed, Dhanki, Himayatnagar markets. It appears from the judgment and order passed by the courts below that the application seeking maintenance came to be rejected mainly on the ground that the applicant is able to maintain himself. I do not find any fault in the judgment and order passed by the courts below.

7. It also appears from the evidence of the applicant and non applicant that the applicant is able to maintain himself. Even though the applicant has claimed that non applicant is getting income by way of salary, however, no documentary evidence is placed on record to substantiate the same. It is the case of the non applicant that he is unemployed and he has to maintain his wife and children. His mother Shantabai has also supported his case. It also appears from the evidence of witness No.2 Shantabai that the maintenance proceeding initiated against the present petitioner came to be settled amicably after paying lump-sum amount of maintenance to the tune

of Rs.10,000/- and she relinquished her future rights of maintenance. It appears from the evidence that the petitioner applicant is able to maintain himself. There is no satisfactory evidence on record that the respondent non applicant though having sufficient means, failed to pay maintenance to the petitioner-original applicant. Hence, the following order:-

O R D E R

- I. Criminal writ petition is dismissed. Rule discharged.
- II. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

rlj/