

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

CRIMINAL REVISION APPLICATION NO.91 OF 2017

1. Bhumika w/o. Sachin Bagade
Age : 32 Years, Occu : Household,
R/o. At Present Plot No.2, Padmapani
Colony, Aurangabad
2. Ku. Anika d/o. Sachin Bagade
Age : 3 years, Occu : Nil,
R/o. As above.
Being minor through her
Natural Guardian mother i.e.
Applicant No.1 above.

.. Applicants
(Orig. Applicants)

VERSUS

Sachin s/o Vishwanath Bagade
Age : 40 years, Occu : Service,
R/o. At Present New Pahadsingpura,
Behind Biwi Ka Makbara,
Dist. Aurangabad

.. Respondent
(Orig. Respondent)

...

Advocate for the applicants	:	Shri. A.M. Gholap
Advocate for the respondent	:	Shri. Gopal P. Pande & Shri. A.G. Kulkarni

....

CORAM : P.R. BORA, J.

Reserved on : 01.09.2017
Pronounced on : 11.09.2017

JUDGMENT :-

1. Heard the learned Counsel appearing for the parties.
2. “In the proceeding under Section 125 of the Code of

Criminal Procedure, whether Family Court can pass an order giving access to the minor for whom the maintenance is sought” is the small but important question raised in the present criminal revision application.

3. Application under Section 125 of the Code of Criminal Procedure (for short 'Code') filed by the present applicants is pending before the Principal Judge of Family Court at Aurangabad. In the said application, the present respondent filed an application at Exh.34 with a prayer that, he be given access to his minor daughter for whom the maintenance is sought. The application so filed was opposed by applicant no.1. Applicant no.1 endorsed her say overleaf the said application contending therein that, the application itself was not maintainable and the prayer as was made by respondent cannot be granted by the Court in the proceedings under Section 125 of the Code. The learned Principal Judge of the Family Court after having considered the submissions made on behalf of the parties, has allowed the said application and has thereby provided access to his minor daughter to the respondent on every 1st, 3rd & 5th Saturday of every month in the Family Court, Children Room from 03:00 to 06:00 p.m. The Family Court has further directed applicant no.1 to send her daughter along with any family member to the Children Room as

directed by the Court.

4. Shri Gholap, learned Counsel appearing for the applicants submitted that, the Family Court does not have any inherent jurisdiction to pass such an interim order in the proceedings under Section 125 of the Code. The learned Counsel further submitted that, the Family Court though has been invested with jurisdiction in the matters arising out of the matrimonial relations, the said jurisdiction can only be invoked in the appropriate proceedings. The learned Counsel further submitted that, the impugned order passed by the Family Court has given rise to an apprehension in the mind of applicant no.1 that, if she does not follow the said order, it will have an adverse effect on the merits of her application for maintenance. The learned Counsel further submitted that, interim orders can only be passed consonant to the final relief claimed in the main application. The learned Counsel submitted that, the main relief sought in the application is grant of maintenance by the respondent and interim order passed by the Court giving access to his minor daughter to the respondent cannot be in any way said to be having nexus with final relief claimed in the application. The learned Counsel further submitted that, even otherwise on the facts also the respondent was not deserving any

such order in his favour for the reason that, he had never shown any care or concern of his minor daughter in the past. The learned Counsel, therefore, prayed for setting aside the impugned order.

5. The learned Counsel appearing for the respondent, initially though supported the impugned order stating that, no prejudice was likely to be caused to applicant no.1 because of the said order, eventually conceded that, the impugned order probably may not be permissible in the proceeding under section 125 of the Code.

6. I have carefully perused the impugned order. The learned Family Judge, though, has accepted that, the reliefs of custody and access are not provided under the provisions of section 125 of the Code, has eventually provided the access to the respondent to his minor daughter observing that, access is like interim relief and was liable to be allowed alike interim maintenance.

7. The observations made as aforesaid and the relief as has been granted by the Family Court vide the impugned order, if considered in light of the provisions of the Code and The Family Courts Act, 1984 (hereinafter referred to as the 'Act of 1984') appears unsustainable. In the impugned order, the learned Principal Judge of

the Family Court has lauded the object of the Act. The learned Judge has observed that, the Family Courts are established for the smooth resolution of matrimonial disputes and the Judge of the Family Court is cast with the duty to first see that, the disputes are amicably resolved. From the discussion made by the learned Judge, it appears that, providing access to the minor daughter to the father was an attempt towards the amicable resolution of the dispute between the mother and the father of the said child.

8. The view taken by the learned Judge though appears innovative, the question remains 'whether such an order can be held to be legal and sustainable and whether the Family Court can pass such order in the proceeding under Section 125 of the Code'. The answer is of course 'No'. The impugned order cannot be sustained for plural reasons. Section 7 of the Act of 1984 prescribes the jurisdiction of the Family Court. Explanation to said Section 7 enlists the matters that may fall within the jurisdiction of the Family Court. I deem it appropriate to reproduce entire said Section, which reads thus :

“7. Jurisdiction.- (1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any district Court or any subordinate civil Court

under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district Court or, as the case may be, such subordinate civil Court for the area to which the jurisdiction of the Family Court extends.

Explanation.- The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for

maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment.”

9. Reading of the aforesaid section reveals that, under Section 7(1) read with clause (g) of the explanation, a suit or proceeding in relation to the access to any minor can be filed before the Family Court having territorial jurisdiction. Referring to the aforesaid provision, it was sought to be canvassed by the learned Counsel appearing for the respondent that, it was within the jurisdiction of the Family Court to pass the impugned order. The arguments so raised however is fallacious and cannot be accepted.

10. Sub-section (2) of section 7 provides that, subject to the other provisions of this Act, a Family Court shall also have and exercise – (a) the jurisdiction exercisable by the Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973. Admittedly, the applicants have filed the application before the Family Court under Section 125 of the Code. It is thus evident that, the said application is being dealt with and adjudicated by the Family Court exercising the powers vested in it by virtue of sub -clause (2) of

section 7 of the Act. While adjudicating the said application, the jurisdiction that would be exercised by the Family Court would be that of the Judicial Magistrate, First Class. It has to be therefore seen 'whether the Judicial Magistrate First Class can pass any such order, may be by way of interim relief, in a proceeding under section 125 of the Code, thereby granting access to the minor child to the father of the said child, against whom, the maintenance application is filed. The answer is obviously 'No'. The Judicial Magistrate, First Class does not possess any such power or authority under the Code to pass any such order even by way of interim arrangement. The learned Principal Judge of the Family Court, therefore, could not have passed the impugned order when it was exercising the jurisdiction exercisable by a Judicial Magistrate, First Class under Chapter IX of the Code. The impugned order, therefore, cannot be sustained. It is accordingly set aside. It would, however, be open for the respondent to avail the appropriate remedy for seeking access to his minor daughter. Criminal Revision application, thus, stands allowed.

11. Pending criminal application, if any, stands disposed of.

(PR. BORA, J)