

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:**NAGPUR BENCH : NAGPUR****Criminal Revision No. 90 of 2018****[Dr. Subhash Dnyaneshwar Waghe Vs. Ku. Sharvika Subhash Waghe]**

**Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.**
Court's or Judge's orders

Ms. S. N. Thakur, Adv., for the applicant.

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CORAM : NITIN W. SAMBRE, J.

DATE : 12th September, 2018

The respondent-daughter through her mother filed Misc. Criminal Case No. 220 of 2014 claiming maintenance under Section 125 of Criminal Procedure Code.

It is the case of the respondent that her mother and present applicant got married in November, 2002 and she was born on 11th June, 2004. In view of matrimonial discord between the present applicant and her mother, the daughter claimed maintenance pursuant to the provisions of Section 125, Criminal Procedure Code.

The learned Magistrate having looked into the objections raised by the present applicant rejected the claim for maintenance vide order dated 07th April, 2015, which was reversed by the order impugned dated 6th

April, 2018 passed in Criminal Revision No. 28 of 2015.

As such this Revision by the original-non-applicant.

The learned counsel for the applicant would raise an objection to the very maintainability of the Revision before the learned Sessions Court on the ground that the refusal to award the interim maintenance is an interlocutory order and against the same, Revision is not maintainable, as the rights of the parties are not finally adjudicated. The learned counsel for the applicant would draw support from the judgment of the Calcutta High Court [Appellate Side] in the matter of **Fatema Bibi Vs. Ali Hossain Mondal**; decided on 23rd June, 2010 [C.R.R. No. 1794 of 2009] . Reliance is also placed on the Apex Court judgment in the matter of **K. K. Patel & another Vs. State of Gujarat & another** [(2006) 6 SCC 195], particularly paragraph 11. It is also submitted that unless the main proceedings/application under Section 125, Criminal Procedure Code, is finally decided, there cannot be an order of interim maintenance in favour of respondent-daughter. The learned counsel for the applicant would urge that applicant's wife, i.e., mother of the present non-applicant is gainfully employed in a college and is drawing substantial salary which is sufficient to maintain the present respondent - daughter. The learned counsel then would urge that the present applicant is in financial difficulty and there are

proceedings - qua - the restitution of conjugal rights pending. The applicant as such sought interference.

None appears for the non-applicant though served.

Considering the nature of profession practiced by the applicant, the learned Sessions Judge in revisional jurisdiction awarded maintenance of Rs. 5,000/- for a period from 6th November, 2014 till 6th April, 2018 and thereafter Rs.8,0000/- per month having regard to the fact that the respondent-daughter is studying in IX Standard and it is the equal responsibility of the present applicant - her father to bear the maintenance allowance.

So far as the contention of the applicant that the Revision was not maintainable before the learned revisional Court is concerned, what is required to be noted upon perusal of the reply filed by the present applicant before the learned Magistrate's Court is that there is no substantial objection raised in the proceedings which is likely to culminate the application for maintenance in favour of the present applicant when the relationship is not denied.

Apart from above, the law on the issue of entitlement of a daughter to payment of maintenance allowance is well settled in a catena of judgments

delivered by this Court. Even if the wife of the present applicant is earning, that does not give any absolute right to the present applicant to evade his responsibility to maintain his daughter when such relationship is not denied. The applicant is a practicing doctor and considering the fact that in law he is bound to maintain his daughter, the learned Courts below have rightly awarded maintenance. Merely because the proceedings for restitution of conjugal rights are pending, the provisions of Sub-Section (4) of Section 125 of Criminal Procedure Code, or any other sub-Sections do not put an embargo on the right of the respondent to claim maintenance. The proceedings for restitution will take its own shape. However, pendency of said proceedings cannot be read to the detriment of the respondent's right to claim maintenance. That being so, there is no substance in the present Revision. The Revision is, therefore, dismissed.

Judge