

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

CRIMINAL REVISION APPLICATION NO. 213 OF 2019

Bazeem Ismail Afakhur Rahman Khan,
Age 40 years, Occupation Service,
R/o. Maqsood Colony, Aurangabad,
District Aurnagabad.

... **Applicant.**

VERSUS.

- 1) Asra Anjum Bazeem Khan, Age 36
years, Occupation Service,
R/o. Plot No. 2 Ahbab Colony,
Kat Kat Gate Road, Aurangabad.

- 2) Miss Maimuna Nasif d/o Bazeem
Khan, U/g of mother (respondent No.1)

... **Respondents.**

...

Advocate for the Applicant :Mr. Shaikh Mujtaba Gulam Mustafa.
Advocate for the respondents: Mr. R.R. Barhate.

CORAM : MANGESH S. PATIL, J.

DATE : 20/09/2019

JUDGMENT :

Heard. Rule. The rule is made returnable forthwith. The learned advocate Mr. R.R. Barhate waives service for the respondents. On the request of both the sides the matter is heard finally at the stage of admission.

2. The only issue which involves in this Writ Petition is as to whether a statutory right of a minor daughter to claim maintenance

under section 125 of the Code of Criminal Procedure could be contracted out by a Muslim couple who enter into Khulanama.

3. The facts as are necessary for deciding the issue may be summarized as under:

The respondents filed a petition under section 125 of the Code of Criminal Procedure against the applicant in the Family Court, claiming only maintenance for the respondent No. 2 minor daughter at the rate of Rs. 10,000/- per month and also prayed for some lumpsum amount as her marriage expenses. The applicant put appearance and inter alia contended that since the nature of the couple was not compatible they decided to get separated and entered into a Khulanama wherein the respondent No. 1-wife accepted Rs. 21,000/- as Mehar and relinquished her right to claim Iddat. She also undertook not to initiate any proceeding against him under section 125 of the Code of Criminal Procedure or Muslim Women Protection of Rights on Divorce Act, 1986. She also agreed to not lay any claim either in Shariyat or Court. In addition it was also mentioned in Khulanama that the respondent No. 2 is the daughter of the couple and respondent No. 1 would maintain her at her own expense. After conducting hearing, by the impugned judgment and order the learned Judge of the Family Court allowed the petition partly and directed the

applicant to pay Rs. 4000/- per month as maintenance to the respondent No. 2 from the date of petition i.e. December 2017 and also directed him to pay her Rs. 5000/- as cost. Being aggrieved, the applicant is before this Court.

4. The learned advocate for the applicant vehemently submitted that since the parties are Mohammedan, the couple has agreed to sever the relations and have entered into a Khulanama. While obtaining such Khula, the respondent No. 1 had specifically undertook to maintain the respondent No. 2. Once she has obtained such Khula with this condition, she could not have claimed any maintenance for the respondent No. 2. He also pointed out that the respondent No. 1 is serving as a lecturer in an Engineering College and earning several thousand rupees as a salary. She has engineered this proceeding just to harass the applicant who is doing some part time job and barely earning Rs. 25,000/-per month. Therefore the application for maintenance for the respondent No. 2 minor daughter was not maintainable and when the respondent No. 1 has sufficient means to maintain the respondent No. 2 and has undertaken such responsibility as a condition of the Khula, the impugned order is liable to be quashed and set aside.

5. Per contra, the learned advocate for the respondents submits

that the statutory right of the respondent No. 2 to claim maintenance under section 125 of the Code of Criminal Procedure from the applicant who is her father cannot be so contracted out by her mother. There is no record to show that the interest of the respondent No. 2 was protected during such settlement. Therefore, merely because the respondent No. 1 in the Khulanama has agreed to maintain the respondent No. 2, that would not impinge upon the right of respondent No. 2 to claim maintenance.

6. The learned advocate also submitted that the respondent No. 2 is a school going child aged 7 years. Whereas the applicant is in some employment and is earning Rs. 24,000/- per month. In the absence of any other material to show that he has to maintain any body else, direction him to pay Rs. 4000/- per month for the maintenance of the respondent No. 2 by no stretch of imagination can be said to be excessive.

7. I have carefully gone through the papers. It does appear that the applicant and the respondent No. 1 entered into a Khulanama (Exhibit 30). It also appears that there is mention about respondent No. 1 having undertaken to maintain the respondent No. 2 and to bear the expenses for her upbringing. However, the question herein is as to whether though the respondent No. 1 is the mother of respondent

No. 2 she could have waived the right of the daughter to claim maintenance from father. It is trite that a statutory right cannot be waived in this manner particularly when the respondent No. 2 minor is not party to any such arrangement and more so when no independent and separate arrangement has been made in this Khulanama for her maintenance.

8. Hypothetically in case of this kind if the mother subsequently refuses to maintain the minor daughter it cannot be said that the daughter would be left with no remedy against her parents. Therefore in my considered view, merely because the respondent No. 1 has undertaken to maintain the respondent No. 2 as a term and condition in the Khulanama (Exhibit 30), that would not affect the right of the respondent No. 2 conferred upon her under section 125 of the Code of Criminal Procedure to claim maintenance from the applicant who is her father. The submission of learned advocate for the applicant that such term and condition does affect her right is not tenable.

9. Though the applicant is stated to have been married, there is evidence on the record to show that he has been earning Rs. 20,000/- to Rs. 24,000/- per month. Taking into account all these aspects including his own need and the need of the respondent No. 2, the learned Family Court Judge has reasonably quantified the maintenance

at Rs. 4000/- per month. In the facts, circumstances and evidence on record, the quantum fixed by the learned Judge is quite reasonable and does not call for any interference.

10. The revision is dismissed. The rule is discharged.

(MANGESH S. PATIL, J.)

mkd