

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

CRIMINAL REVISION APPLICATION NO.327 OF 2018

Balwant @ Baliram s/o Maroti Dhidshare,
Age : 52 years Occ; service and Agriculture,
R/o; Shikshak colony, Ward No.02
House No.2180, Dharmabad,
Tq; Dharmabad District Nanded.

... PETITIONER
(Ori. Respdt. No.1)

VERSUS

1. Kamalbai wd/o Maroti Dhidshare
Age : 72 years Occ; Household
R/o ND 32 HUDCO Onkar nagar
Tq and District Nanded.
2. Jivanrao s/o Maroti Dhidshare,
Age : 50 years Occ; Business
R/o; as above

... RESPONDENTS
[Resp No.1/Ori Petitioner]
[Resp. No.2/ori.Opp.No.2]

...

Advocate for Applicant : Mr. Kale N.G.
APP for Respondent: Mr. Bilolikar Upendra B.

...

CORAM : MANGESH S. PATIL, J.

DATE : 27.09.2019

JUDGMENT :

Heard. Rule. Rule is made returnable forthwith. Learned advocate for the respondent waive service. On the request of the parties, the matter is heard finally at the stage of admission.

2. Under unfortunate circumstances respondent no.1 who happens to be aged mother of the petitioner and the respondent no.2 had to move the family court claiming maintenance under Section 125 of the Code of Criminal Procedure and by the impugned judgment and order both of them were held to be liable to pay to her Rs.3000/- per month each. However, since she was already awarded equal sums from both of them in a proceeding initiated by her under Maintenance and Welfare of Parents and Senior Citizens Act (herein after referred to as “the MWPSC Act”) which was challenged by the applicant but not by the respondent no.2, the learned Judge has directed the applicant to pay to her Rs.3000/- per month, further directing that it should be inclusive of the amount of maintenance directed to be paid by him under the MWPSC Act. Being aggrieved the applicant is before this Court.

3. The learned advocate for the applicant submits that in fact he has ever been ready and willing to maintain the respondent no.1 who till recent past was staying with him whereas the respondent no.2 has been residing separately for last more than 25 years. He also points out that even in an inquiry by the Police the respondent no.1 on 07.02.2014 had specifically stated that she was staying with the applicant and not with the respondent no.2 and therefore there was no reason for the family court to ask him to pay maintenance to her. The

learned advocate would submit that in fact, it is the respondent no.2 who is the man behind the curtain instigating the respondent no.1 mother. The impugned order be quashed and set aside.

4. The learned advocate for the respondent no.2 submits that the matter may be decided on its own merits, however points out that even the respondent no.2 has been directed to pay to the respondent no.1 an amount of Rs.3000/- per month in a MWPSC Act.

5. The learned advocate for the respondent no.1 submits that by no stretch of imagination, the quantum of maintenance arrived at by the learned family Court can be said to be exorbitant. There is material to show that applicant has refused and neglected to maintain her. He has not provided anything for her maintenance even after filling of the proceeding before the family Court in the month of June 2017. The applicant has in his possession agricultural land and also earns gross salary of around Rs.40,000/-. Considering his such earning and the fact that the respondent no.1 is aged 72 years and her need, the learned Judge has come to a reasonable conclusion about quantum of maintenance which may not be disturbed.

6. There is no dispute that the respondent no.1 is more than 70 years of age. May be at least till 2014 she was staying with the applicant himself and the respondent no.2 has been residing separately

for more than 25 years. However, it is simultaneously a fact to be noted that for whatever reason, she no longer stays with the applicant. Being a lady aged more than 70 years, she would need some money for her maintenance. A Judicial note can certainly be taken that with the advancement of age even the need for medical attendance would increase day by day. There is no record to show that after filing of the petition before the family court in the month of June 2017 the applicant on his own has ever paid a single pai to her. It is only due to compulsion that as per the directions of the Court that he had to deposit an amount of Rs.15,000/- towards arrears of maintenance. Over and above that he has not even offered to pay her anything. His stand now that he is ready to maintain her seems to be a qualified one, with a rider that she stays with him. Such qualified offer to maintain her cannot be regarded as his willingness to maintain her.

7. A refusal and neglect has to be inferred from all the attending circumstances. Not providing a single pai for last more than 2 ½ years, may be as a gesture, is indicative of the fact that the applicant has indeed refused and neglected to maintain his mother. Nothing more is required to be looked into to draw such an inference, more so when he is in possession of the ancestral land and is also earning a gross salary of around Rs.40,000/-, which was in the month of December 2017. Therefore no fault can be found in the observation

and conclusion of the learned Judge about he having refused and neglected to maintain respondent no.1.

8. As far as quantum is concerned, as is mentioned herein above, the applicant's gross salary in the month of December 2017 was around Rs.40,000/-. Taking note of the fact that the statutory deduction would be only in respect of Profession tax and Income tax wherein the former is usually Rs.200/- per month, assuming that he has to maintain his own family, the quantum arrived at by the learned Judge fixing maintenance @ Rs.3000/- for the applicant to pay cannot be said to be either disproportionate or unconscionable more so when he also is in possession of agricultural land.

9. Some argument was advanced by the learned advocate for the applicant to demonstrate as to how the respondent no.2 is playing tricks and has now instigated the respondent no.1 to initiate the present proceeding. In my considered view, though that could be a reason or a fact, however, it is absolutely irrelevant and has no bearing on the right of the respondent no. 1 to claim maintenance from the applicant who is her son.

10. The learned Judge has considered not only the liability of the applicant but even the liability of the respondent to provide maintenance to the equal extent. True it is that in the operative part

there is no such direction against the respondent no.2 to pay to her Rs.3000/- per month. Perhaps, the reason could be because admittedly the respondent no.1 had initiated a proceeding under MWPSC Act and applicant and the respondent no.2 both were directed to pay to her to Rs.3000/- per month and the Magistrate has quantified the amount of maintenance at Rs.3000/- per month directing it to be inclusive of the maintenance awarded under that Act. Conspicuously, it is the applicant who had challenged that order under that Act whereas the respondent no.2 did not put any challenge.

11. Whatever may be the reason, as far as the applicant is concerned, he has been directed to pay an amount of Rs.3000/- per month and this quantum has been made inclusive of the order passed under MWPSC Act. By no stretch of imagination, can it be said that the quantum of maintenance is arbitrary or perverse. There is no substance in the revision which is liable to be dismissed.

12. The revision is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)