

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

CRIMINAL WRIT PETITION NO. 1138 OF 2019

Gajanan Yadavrao Pankade
Age: 49 years, Occu.: Service,
(Police Constable B.No.1103)
Kranti Chowk Police Station,
Aurangabad

..PETITIONER

VERSUS

1. Alka w/o Gajanan Pankade
Age: 43 years, Occu.: Household,
R/o H. No. 4-35-1316, Plot No. 76,
Gurudutta Nagar, Garkheda Parisar,
Aurangabad

2. Rajashri d/o Gajanan Pankade
Age: 22 years, Occu.: Education,
R/o as above

3. Tanmay s/o Gajanan Pankade
Age: 18 years, Occu.: Education,
R/o as above

..RESPONDENTS

....
Mr. M.D. Shinde, Advocate for petitioner

Mrs. V.P. Dhorde, Advocate appointed through Legal Aid for respondents

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CORAM : R.G. AVACHAT, J.
RESERVED ON : 02nd DECEMBER, 2019
PRONOUNCED ON : 05th MAY, 2020

JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally with the
consent of learned Counsel for the parties.

2. The challenge in this writ petition is to the judgment and order dated 10th May, 2019 passed by Family Court, Aurangabad in petition being Petition No. E-175 of 2017. By the impugned judgment and order, the petitioner – husband, respondent in the petition before the Family Court, has been directed to pay Respondent No.2 – daughter Rs.3,000/- per month from the date of order in addition to the maintenance granted to her under Protection of Women from Domestic Violence Act, 2005 (“PWDV Act”) and pay Respondent No.3 – son, Rs.3,000/- per month during his minority and thereafter pay his educational expenses.

Facts in brief giving rise to the present petition are as follows :-

3. Respondent No.1 is a legally wedded wife of the petitioner. The couple is blessed with two children, Respondent Nos. 2 and 3. Respondent No.1 – wife had filed an application under PWDV Act (Cri.M.A. No. 1230 of 2012). The said application was allowed on 06th May, 2016 directing the petitioner to pay Respondent No.1 - wife Rs.4,000/- per month and Rs.3,000/- per month each to Respondent Nos. 2 and 3. Thereafter the respondents filed application for grant of maintenance under Section 125 of Code of Criminal Procedure (“Cr.P.C.”). The said application was allowed as stated hereinabove. The petitioner is, therefore, before this Court.

4. Mr. Shinde, learned Counsel for the petitioner would submit that under Section 125 of Cr.P.C. a father is liable/responsible to maintain his

minor child unable to maintain itself. The father is also responsible to make provision for maintenance of his major child, if such child, by reason of any physical or mental disability, is unable to maintain itself. According to learned Counsel, both Respondent Nos. 2 and 3 have attained majority long back. None of them claim to be unable to maintain itself on the ground of physical or mental abnormality and therefore, learned Judge ought not to have allowed the application. He would further submit that the petitioner has already been paying respondents towards their maintenance pursuant to the order passed in a proceeding under PWDV Act. According to him, no two proceedings for the same relief under two different statutes is permissible. Learned Counsel would further submit that the petitioner constructed a house and has given it to the respondents for their residence. The house has been constructed by raising a loan. The petitioner has been repaying the loan by monthly installments. A land, admeasuring 5 Acres 20 Guntha, has also been given to the respondents for their maintenance. As such, provision has already been made for their maintenance. Moreover, Respondent Nos.2 and 3 being major, are not entitled to claim maintenance. He has, therefore, urged for allowing the petition.

5. Mrs. Dhorde, learned Counsel for the respondents would, on the other hand, reiterated the reasons given by the Family Court in support of the judgment and order. Learned Counsel would further submit that the

proceedings under PWDV Act are in addition to the proceeding under Section 125 of Cr.P.C.. Learned Counsel ultimately urged for dismissal of the petition.

6. Admittedly, the respondents had moved an application under Section 12 of PWDV Act. Said application was allowed directing the petitioner to pay Respondent No.1 - wife Rs.4,000/- per month and Respondent Nos. 2 and 3 Rs.3,000/- per month each towards their maintenance. The said order is in force. Thereafter the respondents moved an application under Section 125 of Cr.P.C., wherein the impugned order has been passed. The said application was rejected so far as regards the claim of Respondent No.1 – wife is concerned. She has not taken exception to the said order.

7. The question raised in this petition is as to whether the Family Court was justified in directing the petitioner to pay for maintenance of his children – Respondent Nos. 2 and 3, who have attained majority. Birth certificates of both these respondents are on record. Respondent No.2 – daughter was born on 11th August, 1997, while the date of birth of Respondent No.3 – son is 05th March, 2001. Both these respondents have attained majority on 11th August, 2015 and 05th March, 2019 respectively.

8. For deciding the issue involved in this petition, it is necessary to have a look at Section 125 of Cr.P.C.

“125. Order for maintenance of wives, children and parents.-

(1) If any person having sufficient means neglects or refuses to maintain -

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct :

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct;

9. Reading of clause (b) and (c) of Section 125 of Cr.P.C. reveals that the legitimate or illegitimate minor child and legitimate or illegitimate child, who has attained majority, but unable to maintain itself on account of physical or mental abnormality can claim maintenance, if there is neglect or refusal to maintain them. It would thus be clear that under Section 125 of Cr.P.C. a child, who has attained age of majority and who is not able to maintain itself on account of physical or mental abnormality, is entitled to claim maintenance from the father.

10. The Apex Court, in the case of ***Jagdish Jugtawat Vs. Manju Lata and Ors., (2002) 5 SCC 422*** held as follows :-

“Applying the principle to the facts and circumstances of the case in hand, it is manifest that the right of a minor girl for maintenance from parents after attaining majority till her marriage is recognized in section 20(3) of the Hindu Adoptions and Maintenance Act. Therefore, no exception can be taken to the judgment/order passed by the learned Single Judge for maintaining the order passed by the Family Court which is based on a combined reading of section 125, Code of Criminal Procedure and section 20(3) of the Hindu Adoptions and Maintenance Act. For the reasons aforesaid, we are of the view that on facts and in the circumstances of the case no interference with the impugned judgment order of the High Court is called for.”

11. Moreover, the Division Bench of this Court in the case of ***Vijaykumar Jagdishrai Chawla Vs. Reeta Vijaykumar Chawala, 2011(5)***

Mh.L.J. 715 = III (2011) DMC 687 while dealing with similar issue as to whether unmarried daughter is entitled to receive amount of maintenance from her father or mother so long she is unable to maintain herself out of her own earnings, by referring to the provisions of section 20 of the Hindu Adoption and Maintenance Act, 1956 was pleased to hold that the father cannot be extricated from his liability to maintain his unmarried daughter who is staying with his wife and he would be bound not only to maintain his unmarried daughter but also responsible to maintain until her marriage.

12. It is thus clear that an unmarried daughter, though attained majority, is entitled to claim maintenance from her father. In the case in hand, Respondent No.2 – daughter admittedly attained majority on 11th August, 2015. It is however not the case of the petitioner that she is able to maintain herself. So far as regards the question of quantum is concerned, the petitioner is serving as Police Naik. His pay slip for the month of May 2018 shows his gross salary was Rs.40,602/-. Admittedly, the petitioner owns agricultural land. Although he has transferred some of his agricultural land in the name of the respondents, he did not transfer its possession in their favour. True, the petitioner has already been paying a sum of Rs.3,000/- per month to Respondent No.2 pursuant to the order passed in a proceeding under PWDV Act. The said fact has been taken into consideration by the Family Court while deciding the application under Section 125 of Cr.P.C. Order under Section

125 of Cr.P.C. is independent and in addition to maintenance awarded under PWDV Act. No doubt maintenance has to be awarded in a subsequent proceeding after considering the quantum already awarded under the previous proceeding.

13. It is a fact that by passage of time, salary of government servant is increased on account of annual increment, pay revision and grant of dearness allowance. The fact that the petitioner's gross salary was Rs.40,602/- in the month of May 2018 and to be holder of large tract of agricultural land, the Family Court was justified in directing the petitioner to pay Respondent No.2 Rs.3,000/- per month in addition to the maintenance granted under PWDV Act. No interference with the order granting maintenance to Respondent No.2 is therefore warranted.

14. So far as regards the order directing the petitioner to pay Respondent No.3 – major son a sum of Rs.3,000/- per month until he attains majority, no interference is called for. So far as regards directing the petitioner to pay/bear educational expenses of Respondent No.3 is concerned, the said order cannot be justified either under Section 125 of Cr.P.C. and/or by taking recourse to Section 20 of Hindu Adoption and Maintenance Act, 1956 and relying on the judgment of the Apex Court in the case of Jagdish Jugtawat (supra).

15. In view of the above, petition partly succeeds. Order dated 10th May, 2019 passed by Family Court in Petition No. E-175 of 2017 directing the petitioner to pay/bear educational expenses of Respondent No.3 is hereby set aside. Rest of the impugned order to stand unaltered. Rule is made partly absolute. Fees of Mrs. Dhorde, learned Counsel appointed through Legal Aid for the respondents, is quantified at Rs. 2,500/-.

(R.G. AVACHAT, J.)

SSD