

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

913 CRIMINAL APPLICATION NO.833 OF 2020

**MILIND S/O. RAMAKANT GUJRATHI
VERSUS
HARSHADA D/O. DEELIP KULKARNI AND OTHERS**

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Advocate for Applicant : Mr.Surve Hemant and Mr.Surve Kshitij H.

Advocate for Respondent Nos 1 & 2 : Mr.Pande Dipesh D.

APP for Respondent No. 3 : Mr. R.D. Sanap

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CORAM : SURENDRA P.TAVADE , J.

DATE : 24th August, 2021.

P. C. :

1. Heard the learned counsel for the applicant, the learned counsel for respondents No. 1 & 2 and the learned APP for State.

2. Learned counsel for the applicant submits that respondent No. 1 had filed an application for maintenance against the present applicant in the Court of Jalagaon, wherein, compromise had arrived at. Accordingly, the then Magistrate had accepted the compromise petition and disposed of the application for maintenance No.96.2016 on 19.03.2015,. Similarly the other proceedings between the parties were also disposed of with consent.

3. It is contended that respondent No. 1 has filed a fresh application for maintenance under Section 125 of the Code of

Criminal Procedure before the Judicial Magistrate First Class, Jalgaon on 04th December, 2018. The applicant appeared and filed his explanation contending therein the history of earlier litigation between the parties. Thereafter, he also filed a protest application. The said application was not considered by the trial Court. The **Trial Court has simply passed following order :**

“Perused the application. Say not filed. Considering nature of the petition and and application, it be heard and decided along with main petition.”

4. The said order was passed on 24th February, 2020. In view of the order passed by the trial Court, it appears that the trial Court intended to proceed with application for maintenance and thereafter would consider the protest petition. It will take some time for the same. Therefore, it is contended that the Trial Court may be directed to decide the protest petition filed by the applicant, as early as possible.

5. Heard learned counsel for the respondent No 2. He submits that respondent No.1 has independent right of maintenance, therefore, she filed second application and that has to be decided on merit. It is prayed that the said application is required to be decided on merit. It appears that in view of the earlier petition and the compromise arrived at between the parties, the protest petition should be disposed of by the Magistrate. So that the applicant

may take further action. Hence following order :

ORDER

1. The trial Court is to decide the protest petition filed by the applicant within one month.
2. The petition is disposed of.

**(SURENDRA P.TAVADE)
JUDGE**

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