

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.**

**CRIMINAL WRIT PETITION 154 OF 2020**

Mr. Vasant Chintaman Kshirsagar,  
age 70 yrs, Occ. Retired,  
r/o. Plot no.2, Sunrise Apartment,  
Pandav Nagari Vadala Pathardi Road,  
Indira Nagar, nasik – 422 009

....**PETITIONER**

**VERSUS**

Dr. Aruna Vasant Kshirsagar,  
age 74 yrs, occ. Retired,  
R/o. S-5, Shanta Vihar Apartment,  
Ramdaspath, Birla Raod,  
Akola 444 001.

....**RESPONDENT**

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Ms. Pallavi Mahashabde, counsel for petitioner.  
Mr. K.C. Deogade, counsel for respondent.  
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**CORAM : ROHIT B. DEO, J.**

**DATE : 31.03.2021**

**ORAL JUDGMENT :**

Heard.

2.           The petitioner, who is aged 70 years, is aggrieved by the order dated 5.10.2019, rendered by the Judge, Family Court, Akola, in E. Petition 113/2018, whereby the petitioner is directed to pay the respondent Rs. 3500/- per month, as interim maintenance.

3. Ordinarily, I would be loath to entertain a challenge to an order directing payment of interim maintenance.

4. However, what is discernible from record is that the respondent herein, who is a highly educated lady, aged 74 years, and who retired as a teacher, did not disclose that she was receiving monthly pension of Rs. 30,000/-. All that was averred in the application under section 125 of Code of Criminal Procedure (“Code”), was a guarded statement that the pension received is not sufficient for the applicant’s maintenance. It is before this Court, that the respondent herein came clean on the quantum of pension. Pertinently, the petitioner is insisting that the amount of monthly pension received by the respondent is more than Rs. 30,000/-. This Court directed the respondent to place on record the passbook or any other material reflecting the exact amount of pension. Several opportunities were granted to enable the respondent to place the material on record, but in vain. Ultimately, this Court recorded vide order dated 23.3.2021 that adverse inference may be drawn from the conduct of the respondent. It is not even necessary to draw adverse inference.

Even if the disclosure made by the respondent is taken at face value, she is irrefutably receiving Rs. 30,000/- per month as pension, and the order of interim maintenance, is therefore, absolutely unwarranted. Jurisdiction under section 125 of the Code cannot be exercised at the mere askance of the woman. The legislative intent is to protect a distressed woman from penury and vagrancy. The learned Judge, has opted not to delve deep and surprisingly, observes that the petitioner herein did not place on record material to establish the quantum of pension received by his adversary – respondent herein. The approach of the learned Judge is clearly unjustified. It was the duty of the respondent, who preferred the application under section 125 of the Code, to faithfully disclose the amount of pension received. This was not done and the petitioner was in a sense penalized on the premise that he did not place on record the documents, which obviously were and are within the personal knowledge and possession of his adversary.

5. The petitioner is emphatic in the submission that there is no marital bond and indeed not even a relationship akin to marriage. I am not inclined to dilate on the said submission.

The submission will have to be scrutinized by the trial Judge after the parties adduce evidence.

6. In my considered view, the order of interim maintenance is unsustainable and deserves to be quashed, and is accordingly quashed.

7. The learned Judge, is requested to finally dispose of the application under section 125 of the Code, as expeditiously as possible, and in any event, within six months from the date of production of this order.

8. Rule is made absolute.

**Judge**

Belkhede