

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

Criminal Revision No. 26 of 2021

(Yusufkhan Bismilla Khan ..vs.. Shabana Anjum w/o Yusufkhan and ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. V. V. Dahat, Advocate for the applicant
Mr. S. O. Ahmed, Advocate for the respondents

CORAM : ROHIT B. DEO, J.

DATED : 09-08-2021

Applicant Yusufkhan Bismilla Khan is the non-applicant in Petition E-18/2020 instituted by his wife Smt. Shabana Anjum and two others seeking maintenance under Section 125 of the Code of Criminal Procedure, 1973 (Code).

2. Mr. Yusufkhan is aggrieved by the order dated 2-2-2021 rendered by the Judge, Family Court, Yavatmal directing him to pay Rs. 7000/- per month to Smt. Shabana and Rs. 4000/- per month to daughters Ms. Gulnaj and Ms. Saniya with effect from the date of the application.

3. The singular submission of the learned counsel Mr. Dahat is that Ms. Gulnaj attained majority on

25-5-2015 and Ms. Saniya attained majority on 28-5-2021 and ceased to be entitled to maintenance under Section 125 of the Code. Mr. Dahat would submit that in the proceeding under Section 125 of the Code, Smt. Shabana is the only witness examined and Ms. Gulnaj, who attained majority during the pendency of the proceeding, did not step into the witness box to depose that she was not in a position to maintain herself. Mr. Dahat would then submit that there is no material on record to demonstrate that the other daughter Ms. Saniya, who attained majority during the pendency of the petition, is not in a position to maintain herself.

4. The emphasis placed by Mr. Dahat on the absence and pleading and proof is in the context of the observations of the Apex Court in judgment in Criminal Appeal 615/2020 (Abhilasha Vs. Parkash and others) decided on 15-9-2020, which *inter alia* articulate that maintenance can be granted even to a major daughter, not in view of the provisions of Section 125 of the Code, on the basis of a statutory right or right under the personal law, provided the requirement of pleadings and

proof that the major daughter is not in a position to maintain herself is satisfied.

5. Mr. Dahat would submit, that his client Mr. Yusufkhan is not disputing the liability to maintain the two daughters till attainment of majority. Mr. Dahat further states that Mr. Yusufkhan would deposit the amount of maintenance due and payable to the two daughters for the period of their respective minority. Mr. Dahat would submit that insofar as the liability to pay once the daughter attained majority, at the most, the matter can be remitted to the trial Court for the parties to amend the pleadings and adduce the evidence which would enable the trial Court to come to an appropriate conclusion.

6. Mr. S. O. Ahmed is not disputing the position of law nor is he disputing that construed strictly, there is no pleading much less evidence that the daughters are not in a position to maintain themselves. Mr. Ahmed does emphasize that such is the evidence adduced by the mother, and the only aspect which probably was ignored

was that the daughter, who attained majority during the pendency of the proceedings before the Judge, Family Court, was not put in the witness box to depose as an adult as regards her inability to maintain herself. Insofar as younger daughter Ms. Soniya, there is no question of any pleading or proof since she attained majority during the pendency of the revision application before this Court, is the submission of Mr. Ahmed. It is beyond doubt that under the Muslim personal law, a father is duty bound to maintain his unmarried major daughter, provided she is not in a position to maintain herself. While the daughters who have attained majority, may not be covered by the language of Section 125 of the Code, their entitlement to maintenance either under the statute or the Muslim personal law can certainly be the basis of the claim. However, as is apparent, due to the sequence of events referred to supra, the daughters have not entered the witness box to depose.

7. In this view of the matter and in view of the undertaking of the applicant Mr. Yusufkhan to deposit 50% of the amount which is not disputed i.e.

Rs. 2,35,000/- in the Family Court within the next 10 days and the balance amount of Rs. 2,34,000/- within the next two months, the matter is remitted to the learned Judge, Family Court, Yavatmal to give opportunity to the parties to amend the pleadings and to adduce the evidence and then to record a finding on the entitlement of the daughters to claim maintenance after attaining majority.

8. It is made abundantly clear that the maintenance granted to the wife Smt. Shabana is confirmed and also confirmed is the maintenance granted to the daughters till attaining the majority and the only issue left open is their entitlement to claim maintenance after attaining majority. The learned Judge, Family Court is requested to complete the recording of evidence and the delivery of the order as expeditiously as possible and in any event within the next three months.

9. The amount deposited by applicant Mr. Yusufkhan may be withdrawn by the daughters, and the wife, as the case may be.

10. The parties shall appear before the learned Judge, Family Court, Yavatmal on 18-8-2021.

11. The revision application is disposed of in aforestated terms.

JUDGE

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