

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

CRIMINAL APPLICATION (APL) 787 OF 2016

Jaspal Singh Bagga s/o Sunder Singh Bagga,
Aged about 58 years, Occupation:- Business,
R/o Plot No. 661, Usha Nagar Extension,
Vijay Syndicate Colony, Indore-452001.

..... **APPLICANT**
(ORI. RESPONDENT)

...V E R S U S...

Kiran w/o Jaspal Singh Bagga,
Aged about 55 years, Occupation: Housewife,
Presently resident of Flat 302, Ishaan Apartments,
Anand Sai Marg, Clark Town, Nagpur-440004
through her next friend Shri Jagdish Arora
s/o Tarachand Arora, Aged about 62 years,
Occupation- Business, r/o Flat No.202,
Heritage Apartments, MLA Hostel Square,
Civil Lines, Nagpur-440001.

..... **NON-APPLICANT**
(ORI. PETITIONER)

Mr V.V. Bhangde, counsel for applicant.
Ms Ruby Pal, counsel for Non-applicant

CORAM: **ROHIT B. DEO, J.**
DATE: **04-02-2021.**

ORAL JUDGMENT

1] Mrs Kiran, the non-applicant herein, approached the
Family Court, Nagpur under Section 125 of the Code of Criminal

Procedure ('Code') seeking maintenance.

2] Mr Jaspal Singh Bagga, who is the applicant herein, objected to the maintainability of the petition on the premise that the petition is preferred by the next friend who is the brother of Mrs Kiran, and such a course is impermissible in law. The learned Judge of the Family Court rejected the objection vide order dated 02.09.2016.

3] The learned Judge of the Family Court then proceeded to consider the prayer for interim maintenance and vide order dated 16.09.2016, Mrs Kiran is awarded interim monthly maintenance of Rs. 10,000/- w.e.f. the date of the application.

4] Mr Jaspal Singh Bagga is aggrieved by the rejection of his objection to maintainability and by the order of awarding interim maintenance to Mrs Kiran. According to Mr Jaspal Singh Bagga, the marriage between him and Mrs Kiran stands dissolved by the judgment dated 21.11.2011 rendered by the High Court of Madhya Pradesh Bench at Indore in First Appeal 251/2008.

5] Mr Jaspal Singh Bagga contends that the brother of Mrs Kiran could not have initiated the proceedings and the learned Judge of the Family Court erred in concluding that in view of the mental state of Mrs Kiran, her brother was entitled to seek maintenance on her behalf. Mr Jaspal Singh Bagga further contended that the order of interim maintenance runs counter to the observations of the High Court of Madhya Pradesh Bench at Indore. The quantum is also assailed on facts.

6] It is then contended, although in fairness to the learned counsel Mr V.V .Bhangde no submission is advanced, that the maintenance ought to have been given effect to from the date of the order. Mr V.V. Bhangde submits that the contention is not pressed in view of the decision of the Supreme Court in ***Rajnesh V/s Neha reported in 2020 SCC OnLine SC 903***

7] This application invoking the inherent power of the Court is pending since 16.11.2016. While issuing notice, this Court stayed the orders impugned. However, while issuing Rule, this Court directed Mr Jaspal Singh Bagga to pay Rs. 10,000/- per month to the old age home where Mrs Kiran is compelled to reside.

8] In my considered view, it would be in the interest of both Mr Jaspal Singh Bagga and Mrs Kiran that the proceedings which are pending are expeditiously concluded. The grant of interim maintenance does not appear to be either arbitrary or unreasonable as would warrant interference in exercise of inherent powers.

9] Mr V.V. Bhangde, learned counsel however strenuously argues that the issue of maintainability be kept open.

10] The submission is not unreasonable in as much as it would be after the evidence is adduced that the learned Judge of the Family Court would be better equipped to assess the mental health of Mrs Kiran and the justification of her brother filing the application under Section 125 of the Code on her behalf.

11] While, I do not see any reason to interfere with the orders impugned, it is made clear that the issue of maintainability of the application under Section 125 of the Code is kept expressly open.

12] The learned Judge of the Family Court is requested to finally disposed of the proceedings under Section 125 of the Code as expeditiously as possible and in any event within nine months from the date of appearance of the parties. The parties shall appear before the learned Judge of the Family Court, personally or through counsel, on 15.02.2021 and shall bring this judgment to the notice of the learned Judge of the Family Court.

13] It would not be necessary for the learned Judge of the Family Court to issue a formal notice.

14] The application is disposed of in the aforestated terms.

JUDGE