

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1312 OF 2019

JAGANNATH BHAGNATH BEDKE
VERSUS
HARIBHAU JAGANNATH BEDKE

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Advocate for Petitioner : Mr. N. D. Batule
Advocate for Respondent : Mr. D. R. Marked h/f Mr. G. P. Darandale

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 08-07-2022

ORDER :

1. By this writ petition the petitioner father intends to invoke the Constitutional powers of this Court under Article 226 and 227 of the Constitution of India to challenge the order passed by learned Additional Sessions Judge, Ahmednagar, District Ahmednagar, on 25-04-2019 in Criminal Revision Application No.236 of 2017 thereby allowing the said revision filed by the present respondent son and setting aside the order of grant of maintenance passed by learned Judicial Magistrate First Class, Shevgaon, District Ahmednagar, in Criminal Misc.Application No.153 of 2014 by order dated 06-10-2017, under Section 125 of Cr.P.C. The learned Additional Sessions Judge, Ahmednagar by the said revision has dismissed the said application filed by the father against the son for maintenance.

2. The relationship between the petitioner and the respondent is not disputed. It is stated that the petitioner had three daughters and only one son i.e. present respondent. The wife of the petitioner is still alive, but she stays separately from the petitioner but with the respondent. According to the petitioner, he had no source of income and due to his old age he is unable to do any work. He had therefore filed the said application under Section 125 of Cr.P.C. for maintenance. The learned Magistrate after taking into consideration the evidence on record had come to the conclusion that the petitioner is unable to maintain himself, respondent had refused to maintain his father and the son is capable of maintaining father. Under such circumstances, he had granted maintenance @ of Rs.5000/- per month from the date of the original application i.e. 22-07-2014.

3. The present respondent/son challenged the said order in said Criminal Revision No.236 of 2017 and reversing all the findings of the learned Magistrate, the learned Additional Sessions Judge had set aside the order passed by the Magistrate and dismissed the original application. Hence, this writ petition.

4. Heard learned Advocate Mr. N. D. Batule for petitioner, learned Advocate Mr. D. R. Marked holding for learned Advocate Mr. G. P. Darandale for respondent. Perused the affidavit-in-reply filed by the respondent, documents filed along with it, then affidavit-in-rejoinder by the petitioner stating that his present age is 75 years. Once again there is surrejoinder by the respondent son stating that the petitioner had agricultural land admeasuring 57 R and he has sold the same to one Sunil Chandrabhan Admane on 09-11-2015 for a consideration of Rs.3 lakh. However, according to the son, actual consideration amount was Rs.7,50,000/-, but it has been shown less in the sale deed.

5. From the submissions those have been made on behalf of both the sides what could be gathered is that at present the age of the petitioner is around 73 to 75 years. It has now come on record and the learned Advocate for the respondent admits that now there is no land left with the petitioner. The question is then, what is the source of income for the petitioner. Learned Magistrate had already held that he has no source of income. No doubt it was then reversed by the revisional Court taking into consideration the said sale deed executed on 09-11-2015. Even if for the sake of

arguments we accept that there was a piece of land for the petitioner, but whether that is giving him sufficient income to sustain, is a question, and whether his physical ability is allowing him to cultivate the land or get it cultivated through anybody so that he can earn. The son cannot avoid his responsibilities to maintain the father. It appears that he is putting a condition that the petitioner should come and stay along with him like mother. The son cannot impose such condition. Unfortunately now the situation has arisen for the father that he is unable to maintain himself and then he is required to depend upon somebody else. The son is trying to say that because of the vices of the father, there is differences between the mother and the father and they are not residing together. So also now the petitioner is demanding the money just to fulfill his vices. We cannot go into these disputed facts forever. We are required to see as to whether there is a source of income for the petitioner which could give him sufficient amount to support and then there is responsibilities of son to maintain the father, and therefore, the finding which has been arrived at by the learned revisional Court only on the technical basis that some amount was received by the petitioner in the past because of the sell and the so called admission of the petitioner that

by doing labour work he is getting wages @ of Rs.20/- per day. The said order could not have been totally discarded. At the most, the revisional Court by applying proper criteria could have reduce that amount to make it sustainable for both the parties. The income of the son is also then required to be considered because he is already support his own family as well as the mother. The approach taken by the revisional Court appears to be too hyper technical and when it comes to petitions under Section 125 of Cr.P.C., the Courts cannot be so hyper technical in their approach. The said provision is made for the immediate support that too financial in nature of a person so that he or she can survive. Therefore, taking into consideration these aspects, definitely the Constitutional powers of this Court deserve to be invoked in this case when such too technical approach is taken and the petitioner is forced to earn now at this age of 73 to 75 years in view of the dismissal of the original application under Section 125 of Cr.P.C.

6. For the aforesaid reasons, following order is passed.

ORDER

- 1) The writ petition stands partly allowed.
- 2) The Judgment and order passed by learned

Additional Sessions Judge, Ahmednagar, on 25-04-2019 thereby allowing the Criminal Revision No.236 of 2017, is hereby set aside.

3) The Judgment and order dated 06-10-2017 in Cri. Misc. Application No.153 of 2014, passed by learned Judicial Magistrate First Class, Shevgaon, District Ahmednagar, is confirmed in its findings and modified as follows :-

"The Cri.Misc.Appln. No.153 of 2014 stands partly allowed. Respondent Haribhau Jagannath Bedke is directed to pay maintenance @ of Rs.3000/- (three thousand) per month to applicant father Jagannath Bhaginath Bedke from the date of this order i.e. 08-07-2022."

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.