

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

CRIMINAL REVISION APPLICATION NO. 51 OF 2022

Kiran Bagga W/o Jaspal Singh Bagga,
Aged About 60 years,
Occupation Nil,
R/o Flat No.302, Ishaan Apartments,
Anand Sai Marg,
Clark Town, Nagpur – 440004.
Through her Next friend -
Shri Jagdish Arora S/o
Tarachand Arora,
Aged About 67 years,
Occupation – Business,
R/o Flat No. 202, Heritage Apartments,
MLA Hostel Square, Civil Lines,
Nagpur – 440001.

.... APPLICANT

// VERSUS //

1. Jaspal Singh Bagga S/o
Sunder Singh Bagga,
Aged About 63 years,
Occupation – Business,
R/o Plot No. 661,
Usha Nagar Extension,
Vijay Syndicate Colony,
Indore 452001
2. Garima Bagga d/o Jaspal
Singh Bagga,
Aged About 34 years,
Occupation – Service,
R/o C/o Dell Global
Analytics Services,
Senior Business Analysts
H.R. Manager,
Byrasandra, C.V. Raman
Nagar, Bengaluru 560093

3. Isha Bagga d/o Jaspal
Singh Bagga,
Aged About 30 years,
Occupation – Service,
R/o Plot No.661, Usha
Nagar Extension, Vijay
Syndicate Colony, Indore
452001

.... **RESPONDENTS**

Shri C.B. Dharmadhikari, Advocate for applicant
Shri V.V. Bhangade, Advocate for respondent No.1
None for respondent No.2 & 3 though served

CORAM : SMT. M.S. JAWALKAR, J.
DATE OF RESERVING THE JUDGMENT : 20th SEPTEMBER, 2022.
DATE OF PRONOUNCING THE JUDGMENT : 22nd SEPTEMBER, 2022.

JUDGMENT:

Heard.

2. **Admit.**

3. Heard learned Counsel for the applicant and learned
Counsel for the respondent No.1.

4. The present revision application is filed being aggrieved
by the order passed below Exh.35 in E-79/2016 dated 16/09/2021
by the Judge, Family Court No.3, Nagpur.

5. The applicant had filed Petition No. E – 79/2016 before the Family Court, Nagpur against the respondents under Section 125 of the Code of Criminal Procedure seeking maintenance. The respondent had initially raised objection to the maintainability of the petition on the ground that same cannot be filed through next friend. However, learned Judge held that petition filed through next friend is maintainable vide order dated 02/09/2016. Thereafter, the issue of ad-interim maintenance is decided and respondent was directed to pay Rs.10,000/- interim maintenance to the petitioner. The said order of rejection of application about the maintainability and interim maintenance was challenged by the respondent in Criminal Application No. 787/2016 before this Court. This Court observed that there is no reason to interfere with the orders impugned, however the issue of maintainability of the application under Section 125 of the Code is kept expressly open and directions were issued to dispose of the proceedings within nine months from the date of appearance of the parties. The parties were directed to appear on 15/02/2021 before the Family Court.

6. On the day of appearance itself another application for dismissal of the proceeding on the ground of lack of territorial

jurisdiction is filed. The order came to be passed in the said application on 06/04/2021 on which date respondent and his Counsel were absent. The learned Judge, Family Court held that in view of paragraph No. 18 of the petition, the petitioner resides at Nagpur, therefore Family Court at Nagpur has territorial jurisdiction. The respondent herein filed application vide Exh.39 for recalling of the said order dated 06/04/2021. The order dated 06/04/2021 after hearing came to be recalled vide order dated 04/09/2021 and application was restored and kept for fresh hearing. The learned Family Court thereafter passed order below Exh.35 on 16/09/2021 and it was held that Family Court at Nagpur does not have territorial jurisdiction as cause of action arose at Indore and application seeking maintenance was dismissed. The present revision application is filed being aggrieved by the said order. It is submitted that the order is totally erroneous against the provisions of law and settled principle of law. The order is also passed without appreciating the documents on record.

7. The learned Counsel for the applicant, in support of his contention that jurisdiction lies with Nagpur Court, relied on the following judgments as under :

1. *Kumutham and another Vs. Kannappan*, reported in (1998) 5 SCC 693.
2. *Shrikrushna S/o Damodhar Shingne Vs. Sou. Sangita Shrikrushna Shingne*, reported in 2019 ALL MR (Cri) 4967.
3. *Sachin Gupta Vs. Rachana Gupta*, reported in 2019 SCC Online Del 6632.

8. The learned Counsel for the respondent No.1, Shri Bhangde submitted that the order passed by the learned Judge of Family Court, is perfectly legal and justified. The learned Family Court rightly held that their marriage was solemnized at Indore and the cause of action for filing this petition accrued at Indore and not at Nagpur. The pleading of the petitioner itself reveals that the entire act of the refusal or negligence took place at Indore. It is also perfectly held that the petitioner resided lastly with respondent No.1 at Indore and therefore, this Court has no territorial jurisdiction to entertain and try the present proceeding.

9. Apart from this submission, learned Counsel for the respondent submitted that the application is not under Section 125 of the Code of Criminal Procedure and under the garb of 125, the applicant is claiming damages. In view thereof, the Court of Family

Court is having jurisdiction to entertain the application.

10. I have heard both the parties at length. On perusal of complaint itself, it reveals that it was filed under Section 125 of the Code of Criminal Procedure seeking maintenance. The contention of the respondent No.1 that it is nothing but petition for damages and not under Section 125. There is no averment that she cannot maintain herself. On the first place, applicant was represented through next friend. It is stated in the application itself that the respondent not only committed physical cruelty but also emotional cruelty by their various acts. The scars of the emotional cruelty are so deep that she has become mentally seek and imbalance. She is at present in old age home and this Court directed to pay interim maintenance of Rs.10,000/- to old age home. It is also mentioned in the application that *“As against this, respondents are having sufficient means to maintain this applicant. The cause of action for this petition arose when the applicant was forcibly thrown by the respondent No.1 in March 2014 and since the petition seeks maintenance from the respondent and the cause of action is continuous one.”* In view of this submissions in the application itself there is no substance in the contention that it is not application

under Section 125 of the Code of Criminal Procedure but, it is a petition claiming damages. Moreover, this ground is not raised before the Family Court. The only ground raised that as cause of action arose in Indore, the Family Court, Indore is having jurisdiction. The learned Family Court totally erred in holding that territorial jurisdiction is with the Family Court, Indore. The learned Family Court has not considered provision of Section 126 of the Code of Criminal Procedure which reads as under :

“126(1) Proceedings under section 125 may be taken against any person in any district -

(a) where he is, or

(b) where he or his wife resides, or

(c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.”

11. In view of this provision, application under Section 125 can be taken against any person in any district and Clause (b) thereof says that where he or his wife resides. Admittedly, applicant is residing at Nagpur. Therefore Family Court, Nagpur is having territorial jurisdiction when statute itself provide jurisdiction to take application for maintenance, it will not be relevant where cause of action arose. The order passed by learned Judge, Family Court dated 16/09/2021 below Exh.35 as well as Exh. 1 dismissing the petition are patently illegal and contrary to the provisions of law. As such,

liable to be quashed and set aside. Accordingly, I proceed to pass the following order:

ORDER

1. The Criminal Revision Application is allowed.
2. The judgment and order dated 16/09/2021 passed below Exh. 35 and Order below Exh.1, dismissing the petition E-79/2016 are hereby quashed and set aside.
3. Order dated 04/02/2021 passed by this Court in Criminal Application (APL) No. 787/2016 confirming the order dated 16/09/2016 passed by the Family Court, Nagpur awarding interim maintenance of Rs.10,000/- to continue.
4. Parties to appear before Family Court on 30/09/2022.
5. The learned Family Court is requested to dispose of the proceeding under Section - 125 as expeditiously as possible and within nine months from the date of appearance of the parties.
6. The respondent is hereby directed to deposit the arrears of maintenance within two weeks from the date of appearance before the learned Family Court.

The Criminal Revision Application is disposed of.

[SMT. M.S. JAWALKAR, J.]

Jayashree..