

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.150 OF 2022

Mr. Dattatray Vishwanath Khandekar,
Age : 63 years, Occupation : Retired Govt. Servant,
R/ at Flat No.6, Plot No.102, Swarna Residency,
Samarthnagar, Aurangabad 431 001 ...Applicant

VERSUS

1. Mrs. Jyotsna Abhay Tarange
Maiden name Ms. Jyotsna Dattatraya Khandekar,
Age : 36 years, Occupation : Service,
Local Address at A-11, Yogeshwari Vrindavan Society,
Malhar Chowk, Vijay Nagar,
Garkheda Parisar, Aurangabad 431009.
2. Mrs. Ashwini Ganesh Sarag,
Maiden name Ms. Ashwini Dattatray Khandekar,
Age : 34 years, Occupation : Service,
Local Address at Saikrupa, Mill Corner,
Bhoiwada, Near Dr. Ladda Hospital,
Aurangabad 431001. ...Respondents

...

Mr. Rohit Prakash Karhadkar, Advocate for the applicant.
Mrs. Vaishali A. Shinde h/f Mr. Kshitij Surve & Mr. Hemant Surve, Advocate
for respondent nos.1 and 2.

...

CORAM : S.G. MEHARE, J.

DATED : APRIL 13, 2023

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally
with consent of the parties.
2. The applicant/father has preferred the present revision
against the judgment and order of the learned Judge, Family Court,
Aurangabad, passed in Petition No.E-187 of 2019 dated 19.01.2022.

3. The applicant had filed a petition under Section 125 of Cr.P.C. against his daughters. Admittedly, the applicant is a retired Deputy Engineer and was getting a monthly pension of Rs.28,800/- p.m. He seems to have matrimonial discord; hence, the Judge Family Court, Nashik, had passed the order under Section 125 of Cr.P.C. against him. As per his statement, he has impugned the said order before the Bombay High Court at Principal Seat, and it is pending.

4. Learned counsel for the applicant would argue that since he has to pay the maintenance as per the order of the Family Court at Nasik, it is impossible to meet the expenses from the remaining pension. He has various liabilities, including maintaining his mother. The respondents have a good income; hence, they are liable to pay the maintenance. He also argued that the respondent proceeded exparte; even then, the learned Judge, Family Court, Aurangabad, dismissed his petition. The Family Court has committed an error of law in refusing maintenance. In the facts and circumstances of the case, the revision application deserves to be allowed.

5. Per contra, the learned counsel for the respondents/daughters has argued that the applicant failed to prove that he was unable to maintain himself and had no sufficient source of income. She would argue that the applicant had purchased a flat in Nashik. He had a sufficient income. The learned Judge, Family Court, Nashik, had determined the compensation considering his source of

income to the extent of Rs.20,000/- per month. The applicant has proved none of the ingredients of Section 125 of Cr.PC. Hence, the impugned judgment and order is legal, correct and proper.

6. In the absence of proof that the respondents refused and neglected to maintain him, the applicant has come up with a case that since he has to pay huge portion of his pension for the maintenance of his wife, he could not live with the remaining money. *Prima facie*, it appears that the applicant has a source of income. It must be assumed that the learned Judge, Family Court while granting maintenance to the wife, has considered the source of income and on the basis of the income of the applicant, the quantum of maintenance should have been decided.

7. The learned Judge, Family Court, Aurangabad, has considered the relevant provisions of Section 125 of Cr.PC., that dis-entitle the applicant to claim the maintenance under Section 125 of Cr.PC. *Prima facie*, as per the case of the applicant himself, he had a source of income. The applicant had no case to be considered for maintenance under Section 125 of Cr.PC. The impugned judgment and order is free from illegalities and do not appear erroneous and improper.

8. For the above reasons, the petition stands dismissed. No order as to costs.

9. Rule stands discharged.

(4)

10. Record and proceedings be returned to the Court of learned Judge, Family Court, Aurangabad.

(S.G. MEHARE, J.)

Mujaheed//