

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

CRIMINAL REVISION APPLICATION NO.311 OF 2018

Prashant S/o Sharad Vyawahare,
Age : 55 Years, Occ. Service,
R/o. Mantrinagar, Bhavsar Chowk,
Taroda, Nanded. .. Applicant

VERSUS

1. Suman W/o Sharad Vyawahare,
Age : 70 Years, Occ. Household.
2. Sharad S/o Dattatraya Vyawahare,
Age : 76 Years, Occ. Nil,
R/o. Mantrinagar, Bhavsar Chowk,
Taroda, Nanded.
3. Pravin S/o Sharad Vyawahare,
Age : 40 Years, Occ. Business,
R/o. Mantrinagar, Bhavsar Chowk,
Taroda, Nanded. .. Respondents

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Mr. V. B. Kulkarni h/f Mr. A. B. Shinde, Advocate for Applicant
Mr. S. G. Rudrawar, Advocate for respondent Nos. 1 to 3

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CORAM : S. G. MEHARE, J.

DATE : 06.04.2023

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of the respective counsels, heard finally.

2. The applicant/son has impugned an order granting maintenance of Rs. 2500/- each to the parents in petition No.E-145 of 2016 dated 5th October 2018.

3. The parents had filed an application under Section 125 of the Cr.PC before the learned Judge, Family Court, Nanded. The parents and their son(respondent) are and were residing under one roof.

4. The learned counsel for the petitioner has impugned the order on the grounds that the parents did not prove that the applicant refused and neglected to maintain them. Not a single incident indicating refusal and neglect has been pleaded and proved. The bare words were insufficient to prove refusal and neglect to maintain. The Court was not clear about appreciating the oral evidence. The petitioner's oral evidence was received, but a similar rule was not applied to the son/petitioner. He never refused and neglected to maintain them. The petitioner/son has purchased the home where his parents, brother and sisters reside. It was agreed among the siblings that they would pay him some money as rent for using his house, and from that money, he would maintain his parents. However, they stopped paying the money as agreed; therefore, he issued a notice to them. This fact has been ignored and brushed aside by the Courts. The

Court completely avoided discussing the evidence led by the applicant and pick and chose the evidence favouring parents. These are the apparent errors on the face of the record. However, the petitioner being a son, has to perform his obligations. He is ready to pay Rs. 3,000/- per month to them. He also has family responsibilities. His wife is suffering from cancer. He has to repay the loan borrowed for the marriage of his daughter. His son was a college-going. His expenses are more than his income. The Courts did not consider these aspects while determining the quantum. He prayed to modify the quantum to Rs.3,000/- per month from Rs. 5,000/- per month.

5. Per contra, the learned counsel for the parent has argued that the impugned judgment and order is free from infirmity, error, and illegality. The Court has correctly appreciated the evidence. Now his son got a job and making handsome money. The parents had no reason to make false allegations against the son for maintenance, and there were circumstances sufficient to establish the case. The son/ petitioner has refused and neglected to maintain them without sufficient reason.

6. The learned counsel for the son/respondent has correctly pointed out that the burden was on the parents to prove refusal and neglect.

7. Admittedly, the parent did not depose any specific incident. As far as the evidence of refusal and neglect to maintain is concerned, it may be by words or conduct. It may be expressed or implied. Neglect or refusal may mean something more than mere failure or omission. The mother explicitly deposed that they require medication, but the present petitioner refused to provide. She has also deposed that they purchased the house where they were residing under one roof in the name of the applicant. Specific evidence has been led making allegations against the applicant that he refused and neglected to maintain them. His defence that he had to maintain his parents from the rent from his siblings and they stopped him paying money shows his conduct. He was trying to shift his burden on his siblings. It appears, the real dispute is about the house, which stands in the name of the applicant. An agreement with the siblings for rent has no direct connection with the issue before the Court. His conduct is sufficient to believe that he impliedly refused and neglected to maintain the parents. Reading the evidence as a whole, the Court believe that the parents had proved that the applicant refused and neglected to maintain them.

8. The learned counsel for the applicant has raised a serious objection that while appreciating the oral evidence, no importance has

been given to the oral evidence of the present applicant, and it has not been discussed. In the case, at hand, there was oath against oath. The proceeding under Section 125 Cr.P.C. is quasi-civil in nature. Hence, the preponderance of evidence standard would apply. The facts were to be proved by oral evidence. Oral evidence must be direct. If it is seen, the evidence must be of the witness that he saw it; if the facts could be heard, the evidence must be of the witness that he heard it; if the facts could be perceived, the evidence of the witness must be that he has perceived by sense or that manner. In appreciating evidence by applying the provisions of the Evidence Act, the courts either believe that certain facts exist or it considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the proposition that exists, so, the Court has to test the evidence. Hence, the oral evidence is to be tested, whether the allegations and counter allegations were probable and which one inspires the confidence that it was true. Considering the evidence of both, the evidence of parents appears probable, and the defence seems not probable. The trial Court has correctly discussed the proven facts. In view of the legal provision regarding appreciation of oral evidence, the Court did not find that the learned trial Court has committed error.

9. Regarding the responsibilities of the present applicant, there was

no evidence before the Court, that wife has cancer and his son was college going. As far as deductions from his salary for the loan raised for his daughter's marriage, it is not a statutory deduction. Therefore, his claim that he was burdened with the loan raised for his daughter's marriage can not be considered for determining the maintenance quantum.

10. It has also been argued that he was ready to maintain his parents. The bare statement is not sufficient. Whether the offer was *bona fide* or genuine was to be tested by the Court, as provided under sub-section 4 of 125 of the Cr.P.C. There was no offer before the Court. Therefore, the Court could not test whether his offer to maintain was *bona fide* or otherwise.

11. Admittedly, the applicant was in a Government job. In the absence of any documentary evidence about the salary, the Court guessed the income of the applicant to the tune of Rs. 32,000/- per month. A salary of Rs. 32000 p.m. to the employee like the present applicant was probable. The parents complain that they have various physical ailments and need money for their medication regularly. They also need money for their food, clothes, and medicine. Considering all aspects, the quantum determined by the learned Judge Family Court

Nanded appears correct, proper and proportionate. The Court, after going through the impugned judgment and order, did not find error or illegality in the impugned judgment and order.

12. For the reasons stated above, the petition stands dismissed.

13. Rule stands discharged.

14. Record and proceeding be returned to the family Court at Nanded.

15. The office is to accept the demand draft of Rs.21,000/- and it be paid to the respondents.

(S. G. MEHARE)
JUDGE

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