

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

CRIMINAL APPLICATION (APL) NO.823 OF 2022

1. Smt. Venutai Bhimrao Ugle,
Age: about 67 years, Occ: Retired,
2. Smt. Jayshree Ravi Ugle
Age: about 32 years, Occ: Housewife
3. Ku. Anandi Ravi Ugle
Age: about 9 years, Occ: Education
Minor by guardian mother i.e. of
(Applicant No.2)
All R/o Raj Rajeshwar Nagari, Pawsale
Layout, Kaulkhed, Akola, Taluka and
District Akola.

Added Non-Applicants
... Applicants

// VERSUS //

1. Smt. Sadhna Ravi Ugle
Age: about 37 years, Occ: Service
2. Ku. Vaidehi Ravi Ugle
Age: 12 years, Occ: Education
Minor by guardian mother i.e. of
(Respondent No.1)
Both R/o C/o Pramod Onkarrao Babade,
Police Vasahat, Rahat Nagar, Near Saint
School, Near Dube S.T.D. at and Post Akoli
Kh., Taluka and District Akola.

Original Applicants
... Respondents

Shri S.Y. Deopujari, Advocate for the applicants.
Shri J.R. Kidilay, Advocate for the non-applicants.

CORAM : ANIL S. KILOR, J.
DATE OF RESERVING THE JUDGMENT: 15.11.2022
DATE OF PRONOUNCING THE JUDGMENT: 25.04.2023

1. Heard Shri Deopujari, learned counsel for the applicants and Shri Kidilay, learned counsel for the respondents.
2. In the present application, the order below Exh.21 dated 20.10.2021 passed by the Family Court, Akola, allowing the application moved by the non-applicants for addition of name of applicant Nos.1 and 2 as party to the proceeding filed under Section 125 (3) of the Code of Criminal Procedure, is under challenge.
3. The non-applicant No.1 is the widow of Ravi Ugle who is the son of the applicant No.1 and non-applicant No.2 is the daughter of the non-applicant No.1. The non-applicants filed a petition i.e. ER.P No.216 of 2009 in Family Court, Akola under Section 125 of the Code of Criminal Procedure for maintenance for herself and the minor daughter.
4. It is the case of the non-applicant No.1 that the marriage between the non-applicant No.1 and her husband-Ravi was solemnized on 10.06.2006 at Akola and as she was ill-treated mentally and physically by her husband-Ravi and his family members, she lodged the report to the Police and since her husband-Ravi refused to cohabit with her, he

compelled her to stay at parents house and he deserted the non-applicant No.1. Accordingly, she prays for maintenance for herself and her daughter.

5. The family Court vide judgment and order dated 08.10.2010 granted maintenance @ Rs. 4000/- per month to the non-applicant No.1 and Rs.2000/- per month to the non-applicant No.2 i.e. total Rs.6000/- per month. Despite the said order, Ravi failed to pay regular maintenance to the non-applicants which compelled the non-applicants to file recovery proceedings time to time from 2011 against Ravi. One of such recovery proceeding was filed vide ER. Petition No.27 of 2019 for recovery of maintenance amount of Rs.2,74,000/-.

6. On 10.03.2020, due to cardiac arrest, Ravi expired leaving behind non-applicants as legal heirs and as such, though they were entitled to receive the insurance claim pertains to Ravi, husband of the non-applicant No.1 and father of the non-applicant No.2, however, the applicants have claimed that, they are only successors of deceased-Ravi and accordingly, they received the entire insurance amount.

7. The non-applicants therefore, to recover the amount of arrears, moved an application to add the applicant Nos.1 and 2 as party to the recovery proceedings i.e. ER. Petition No.27 of 2019 which came to be allowed vide impugned order dated 20.10.2021, same is the subject matter of the present application.

8. Shri Deopujari, learned counsel for the applicants submits that, it is a settled law that the widowed daughter in law has no right to seek maintenance against mother in law or any of the other relatives of the husband. He, therefore, submits that, the non-applicants cannot ask for recovery of arrears of maintenance amount from the applicant No.1-mother or the applicant Nos.2 and 3. In support of his submissions, he has placed reliance on a judgment of Co-ordinate Bench of this Court dated 05.07.2022 passed in Criminal Application No.293 of 2022.

9. Shri Deopujari, learned counsel for the applicants further argues that, the claim for arrears of maintenance abates on the death of the person against whom an order under Section 125 of the Code of Criminal Procedure has been made and cannot be enforced thereafter against his estate. He, therefore, submits that after the death of husband

of the non-applicant No.1 and father of the non-applicant No.2, the claim for arrears of maintenance amount abates and it is not enforceable against estate of deceased-Ravi. In support of his submissions, he has placed reliance on a judgment of Nagpur High Court in the Case of *Ambadas Bajirao v. Annapurna Bai* ¹.

10. Per contra, Shri Kidiley, learned counsel for the non-applicants submits that the estate of the husband against whom the order of maintenance under Section 125 of the Code of Criminal Procedure has been passed cannot be burden with enforceability of maintenance order under the Criminal Procedure Code for any period beyond the date of the husband's death but is enforceable against it for the period till the husband's death. For this purpose, he has placed reliance on a judgment of Coordinate Bench of this Court in a case of *Halimabee Quari Abdul and others vs. Abdul Ahad Bukhari deceased thorough L.Rs.*², the judgment of the Punjab and Haryana High Court in the case of *Prithviraj Singh v. Smt. Pavanvir Kaur*³ and the judgment of High Court of Himachal Pradesh in the case of *Tara Devi and another Vs. Kumari Uma Devi and another* dated 01.10.2019 passed in Cr.MMO No.178 of 2015.

¹ AIR 1953 NAGPUR 248

² 2002 (2) Mh.L.J. 236

³ 1986 Cri.L.J. 1432

C.L.Dhakate

11. Shri Kidilay, learned counsel for the applicants submits that in light of the well settled principle of law, discussed in the above referred judgments, the learned trial Court has rightly held in favour of the non-applicants and allowed the application for addition of applicant Nos.1 and 2 as party to the recovery proceedings filed by the non-applicants for recovery of arrears of maintenance amount till the death of Ravi. He, therefore, prays for dismissal of the present writ petition.

12. In light of the rival contentions of the parties, I have perused the record and the impugned order.

13. There is no doubt as argued by the learned counsel for the applicants that provision under Section 125 of the Code of Criminal Procedure would not give a right to a widowed daughter in law to seek maintenance against father in law, mother in law or any of the other relatives of husband.

14. However, in the present matter, the non-applicants are not seeking any maintenance under Section 125 of the Code of Criminal Procedure against the applicants but as the applicants have received the

estate of the deceased-Ravi and as the order of granting maintenance can be burden on the estate of the deceased-husband, the application was moved for joining the applicants as party to the recovery proceedings.

15. As far as the judgment cited by the learned counsel for the applicants in the case of *Ambadas Bajirao* (Supra) the same has been subsequently discussed by the Punjab and Haryana High Court in detailed and it has held that, the estate of the deceased-husband cannot be burden with the enforceability of the maintenance order under the Criminal Procedure Code for any period beyond the date of husband's death but is enforceable against it for the period till the husband's death.

16. The Punjab and Haryana High Court in the case of *Prithviraj Singh* (Supra) has distinguished the judgment of the Nagpur High Court in the case of *Ambadas Bajirao* (Supra) on the ground that, the said judgment was passed considering the provisions under the Code of Criminal Procedure, 1898, more particularly Section 488 and the Court has further observed the difference in Section 488 of the old Code of Criminal Procedure and Section 125 of the Code of the Criminal procedure, 1973 and has held thus:

“6. The pivot on which the aforesaid three decisions revolve is that a deceased husband cannot, after his death, be present to participate in an enquiry under sub-sec. (3) of S. 488 of the old Code when sub-sec. (6) of that section requires his presence or that of his lawyer, and further by his death, the husband cannot be taken to have failed, without sufficient reasons, to comply with the order as conceived of in sub-sec. (3) of S. 488 of the old Code. As expressed earlier, there is a noteworthy change in the scheme of legislation, for, now in an enquiry under sub-sec. (3) of S. 125 of the new Cr. P.C. the presence of the husband or his lawyer at the time of recording of evidence is not absolutely necessary. And as long as the husband is alive, he is capable of approaching the Court pleading sufficient reasons which occasioned failure on his behalf to comply with the order. The fact that he had, without sufficient reasons, failed to comply with the order, has not now necessarily to be determined in his presence and, as observed earlier, on a prima facie proof in that regard, the Magistrate can set the law in motion for the recovery of the arrears of maintenance unless and until the husband comes forth pleading and proving that he had sufficient cause or reasons for not complying with the order. Unless such an objection is raised, the Criminal Court would be well within its right to assume absence of such sufficient reasons or cause by the mere fact that arrears of maintenance are due. And this assumption can validly last till the date of the death of the husband. It is only on the demise of the husband that he becomes immune of showing sufficiency of cause and an order of maintenance becomes unenforceable, for the opportunity provided under the law becomes dead with his death. Thus, his estate, as is my considered view, cannot be burdened with the enforceability of the maintenance order under the Criminal Procedure Code for any period beyond the date of the husband's death but is enforceable against it for the period till the husband's death.”

17. The Coordinate Bench of this Court in the case of *Halimabee Quari Abdul* (Supra) has placed reliance upon the Punjab and Haryana High Court in the case of *Prithviraj Singh* (Supra) and recorded agreement with the view taken by the Punjab and Haryana High Court.

18. Similarly, in the case *Tara Devi and another* (Supra) the High Court of Himachal Pradesh has relied upon the judgment of Punjab and Haryana High Court in the case of *Prithviraj Singh* (Supra) and also the judgment of the Bombay High Court in the case of *Halimabee Quari Abdul* (Supra) and in the case of *Gangubai Bhagwan Kolhe v. Bhagwan Bandu Kolhe*,⁴ and held that, maintenance granted under Section 125 of the Code of Criminal Procedure is recoverable from the estate of the deceased husband/father.

19. In the present matter the respondents have come up with a case that the applicants have received entire insurance amount of Rs.3,95,584/- as a successor of deceased-Ravi and service monetary relief of Rs.10,72,299/- left behind by deceased-Ravi and therefore, they want to recover the amount of arrears of maintenance from the amount received by the applicants as successor of deceased-Ravi.

20. Thus, considering the above referred law, I have no hesitation to hold that the learned trial Court has not committed any error in allowing the application moved by the non-applicants for addition of party to the recovery proceedings.

Accordingly, the application is **dismissed**.