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cri wp 879.23

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 879 OF 2023

Suresh Kaluram Thorat
Age: 59 Years, Occ. Nil, At Present,
Retired from service,
Per R/o. Bori, Taluka Shrigonda,
Dist. Ahmednagar.

... PETITIONER

V/s.

1. The State of Maharashtra
2. Shri Kaluram Shripati Thorat,
Age : 88 Yrs., Occ. Agriculture,
R/o Bori, Tal. Shrigonda,
Dist. Ahmednagar.
3. Sou. Shalan Kaluram Thorat,
Age: 78 Yrs. Occ. Household,
R/o Bori, Tal. Shrigonda,
Dist. Ahmednagar.
4. Shri Chandrakant Kaluram Thorat,
Age: 51 Yrs. Occ. Agriculture,
R/o Bori, Tal. Shrigonda,
Dist. Ahmednagar.
5. Shri Shantaram Kaluram Thorat,
Age: 49 Yrs. Occ. Agriculture,
R/o Chinchani, Tal. Shirur,
Dist. Pune.

... RESPONDENTS

.....

Mr. N.S. Pawar, *Advocate for the Petitioner*
Mr. D.B. Bhange, *APP for Respondent-State*
Mr. P.B. Shirshat, *Advocate for Respondent Nos.2 & 3*
Mr. P.B. Vikhe Patil, *Advocate for Respondent Nos.4 & 5*

.....

CORAM : Y. G. KHOBRADE, J.
RESERVED ON : 12.04.2024
PRONOUNCED ON : 26.04.2024

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.
2. The Petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India read with Sec. 482 of Code of Criminal Procedure and thereby questioned the legality and validity of the Judgment and Order dated 3rd June, 2023 passed by the learned Additional Sessions Judge, Shrigonda, Dist. Ahmednagar in Cri. Rev. Appln. No. 25 of 2022, thereby confirming the Judgment and order dated 23rd October, 2021 passed by the learned Judicial Magistrate F. C., Shrigonda in Cri. Misc. Appln. 23 of 2017, whereby the present Petitioner/original Non-Applc. No.1 was directed to pay Rs. 6,000/- per month to the Respondent Nos. 2 & 3 towards maintenance from the date of filing of application u/s 125 of Cri. P. C.
3. The present Petitioner, Respondents Nos. 2 and 3 are original Non-applicants 1 to 3. The Respondents No. 2 & 3 are original Applicants 1 & 2 in Cri. Misc. Appln. 23 of 2017. For the sake of brevity, hereinafter parties to the present petition will be referred in their original capacity as Applicants and Non-Applcs.

4. Heard at length, Adv. N. S. Pawar, learned counsel appearing for the Petitioner, Mr. D. B. Bhange, learned A.P.P. for the Respondent No. 1, Adv. P. B. Shirsath, learned counsel appearing for the Respondents Nos. 2 & 3/ori Applicants 1 & 2 and Adv. P. B. Vikhe Patil, learned counsel appearing for the Respondents 4 & 5 - Ori. Non-Applicants Nos. 2 & 3.

5. Adv. N. S. Pawar, the learned counsel appearing for the Petitioner canvassed that the Petitioner's permanent residential address is village Bori Tq. Shrigonda Dist. Ahmednagar. Petitioner being a Veterinary Officer was serving at Nimgaon Dawadi Tq. Khed Dist. Pune. Therefore, notice could have been issued at the residential address of the Petitioner, however, notice was never served upon the Petitioner's on the residential address. The Petitioner had also not received any postal envelope containing notice on his official address. The Postman never visited the Petitioner's office for service of notice. However, the learned Revisional Court and the Magistrate wrongly presumed that the Petitioner was served with the notice by relying on the endorsement made by the postal authority as "*Refused To Accept Notice*". Therefore, the impugned orders are passed without providing opportunity to defend the cause, hence, it is illegal and bad in law.

6. It is further canvassed that the notice was allegedly issued by Registered Post Acknowledgment Due at the official address of the Petitioner and the postal authority made an endorsement on envelope as "Refused" cannot be termed as valid and legal service. Since, Petitioner was never served with the notice, therefore, the Petitioner was not having any knowledge about pendency of the proceeding. Therefore, the Petitioner did not participate before the learned Judicial Magistrate F. C. The Petitioner first time came to know about said Ex Parte order after service of notice in recovery proceeding. Hence, the Petitioner immediately filed Revision and challenged the said order. However, the learned Sessions Court delivered the impugned Judgment and dismissed the revision without considering the documentary evidence produced by the Petitioner.

7. It is further canvassed that the Respondent No. 1 - father of the Petitioner is having agricultural land and drawing sufficient income. The Petitioner produced 7/12 extract before the learned Revisional Court and demonstrated about having sufficient means for maintenance of Respondent Nos. 1 & 2, however, the learned Additional Sessions Judge failed to consider the same and delivered the impugned judgment, which is contrary to the provisions of Section 125 of the Code of Criminal Procedure.

8. It is further canvassed that the Petitioner, Respondents Nos.4 and 5 are real brothers, however, the learned Judicial Magistrate F. C. passed the Order and only directed the Petitioner to pay monthly maintenance of Rs. 6,000/- to the Respondent Nos. 1 & 2 and not directed the Respondents Nos. 4 & 5. The learned Revisional Court failed to consider this aspect of the matter.

9. It is further canvassed on behalf of the Petitioner that the Petitioner is suffering from heart disease and other ailments. He has retired from his service as Live Stock Supervisor w.e.f. 31st May, 2023 and he is having no source of income and is dependent on his family member. Therefore, the Judgments and Orders passed by both the Courts below are illegal and bad in law. Hence, prayed for quashing and setting aside the said impugned orders dated 03.06.2023 passed in Cri. Rev. Appln. No.25 of 2022 and Order dated 23rd October, 2021 passed in Cri. Misc. No. 23 of 2017.

10. To buttress these submissions the learned counsel for the petitioner has relied on the following cases:

I. Shah Rukh Khan V State of Maharashtra & Anr.; 1998 (2) Mh.L.J. 472

II. Joginder Sing Surmukh Singh V Smt. Balkaran Kaur; 1972 Cri. L. J. 93

III. Suryakanth Vs Smt. Allamaprabhu Alias Allawwa, 2000 Cri. L.J. 120

11. Per contra Adv. P.B. Shirsath, the learned counsel appearing for the Respondents Nos. 2 & 3/Ori. Applicants supported findings of both the Courts below and canvassed that the notices were issued to the Petitioner/ Ori. Non Applicant No.1 on his residential address as well as on official address. The envelope containing notice was sent to the official address of the Petitioner but it was returned back with endorsement as “Refused” by the postal authority. Therefore, presumption can be drawn under Section 27 of the General Clauses Act that the notice was served upon the addressee.

12. The learned counsel for the Respondent Nos. 2 & 3/Ori. Applicants further submits that the present Petitioner filed revision application along with application for condonation of delay caused while lodging the revision. The present Respondent Nos. 2 & 3 filed their reply disclosing the fact that the Petitioner himself filed Written Statement in Regular Civil Suit No. 225 of 2014, which was filed by the present Respondents Nos. 4 & 5 for partition and separate possession and the Petitioner was having ample knowledge about pendency of proceeding for maintenance, however, the Petitioner intentionally and deliberately did not appear in the matter. Further, the present petitioner also instituted Regular Civil Suit No. 297 of 2021 before the Civil Court Shrigonda against one Eknath Shripati. Therefore, the Petitioner is not a layman and he has been regularly attending various Court proceedings.

Therefore, the learned Judicial Magistrate F.C. has considered the evidence available on record and directed the present Petitioner/Non applicant No. 1 to pay maintenance @ Rs. 6000/- p.m. to the Respondents/Ori. Applicants No. 1 & 2. Hence, prayed for dismissal of the petition.

13. Having regard to the submissions canvassed on behalf of both the sides. I have gone through the record. The original Applicants Nos. 1 & 2/ present Respondents No. 2 & 3 are old aged natural parents of the present Petitioner as well as of Respondents 4 & 5. The Applicant Nos. 1 & 2 have filed Cri. Misc. Appln. No.23 of 2017 and application under Sec. 125 of the Code of Criminal Procedure against the Petitioner and Respondent Nos. 4 & 5 thereby praying for maintenance on the ground that they are old aged persons unable to do any work and to maintain themselves. According to the Applicants/Respondents Nos. 2 & 3, they have incurred huge expenses towards educational purpose of the Petitioner/Non-Applicant No. 1, who became a Veterinary Doctor. The Non-applicant No. 2 has studied up to 12th standard and Non Applicant No. 3 studied up to 10th standard. In the year 2001, the Non-Applicant joined Government Service being Veterinary Medical Officer and served at Shirur Taluka, Dist. Dhule, and in Dist. Pune. At the time of institution of the application, the Non-applicant was posted at Dhawadi, Tq. Khed, Dist. Pune. The Applicants and Non-Applicants are having ancestral

property at village Bori, Tq. Shrigonda, Dist. Ahmednager. So also, some properties have been purchased out of income from ancestral properties in the name of the Non-Applicants Nos. 1 to 3. The Non-applicant No. 1 purchased a flat at Pune and 3 Gunthas of land at Shirur and one commercial block in his name out of income of joint family property.

14. In the year 2012, ancestral property was partitioned and given to the Non-applicants, which they have been cultivating and drawing the income. The Applicant Nos. 1 & 2 contended that since the well in Joint family agriculture land was submerged. Hence, said well was dug for which huge expenses were incurred and the Non-Applicant No.1 was asked to share expenses of the same, he in turn abused them and threatened. So also, on 25th September, 2014, Non-Applicant No. 1 assaulted them and abused them in filthy language. The Non-Applicant Nos.1 & 2 contended that they are old aged persons and suffering from various ailments and are unable to maintain themselves. However, the Non-Applicants Nos. 2 & 3 are maintaining them to some extent. Therefore, prayed grant of maintenance to the tune of Rs. 10,000/- per month as against the Non-Applicant No. 1.

15. After service of notices, Non-Applicants Nos. 2 & 3 appeared and filed their say. Both the Non-Applicants admitted the claim of the Applicants. The notice was issued to the Non-Applicant No. 1 by regular mode of service as

well as by Registered Post A. D. on residential address and his official address. However, notice which was sent on official address returned back with endorsement that the Non-Applicant No. 1 “Refused To Accept”. Since, the Non-Applicant No. 1/Petitioner did not appear in the matter, the said application was proceeded ex parte.

16. The Applicant No. 1 led evidence to prove the claim of maintenance but said evidence remain unchallenged. After hearing learned counsel for the Applicants, judgment and order dated 23.10.2021 came to be passed thereby granting maintenance directing Non-Applicant No. 1/present Petitioner to pay Rs. 3,000/- per month to both the Applicant/Respondent Nos. 2 & 3 from the date of application i.e. 14.02.2017. Said judgment and order was challenged by the Non-Applicant No. 1 before the learned Sessions Court by filing Cri. Rev. Appln. No. 25 of 2022. On 3rd June, 2023, the learned Additional Sessions Judge, Shrigonda delivered the Judgment & order and dismissed the Criminal Revision.

17. The Petitioner mainly challenged the impugned Judgment and Order dated 3rd June, 2023 passed by the learned Additional Session Judge, Shrigonda, Dist. Ahmednagar in Cri. Rev. Appln. No. 25 of 2022 arising out of Judgment and Order dated 23rd October, 2021 passed by the learned Judicial Magistrate F. C. , Shrigonda in Cri. Misc. Appln. 23 of 2017 on 4 grounds viz.,

(i) there were no proper service of Notice upon the petitioner (ii) parents i.e. ori. applicants nos. 1 & 2 are having sufficient source of income (iii) though the non-applicants nos. 3 & 4 are real brothers of the petitioner/N.A. No. 1, but no maintenance order was passed against them and (iv) the petitioner/N. A. No. 1 is having no source of income.

18. So far as endorsement made by the postal authority about refusal to accept the envelope is concerned, it is presumed to be served within the meaning Sec. 27 of General Clauses Act because the Postman or the Postal Authority cannot make such an endorsement on its own accord, unless such authority knows the addressee who has refused to accept the postal articles.

19. In ***D. Vinod Shivappa V/s. Nanda Belliappa; (2006) 6 SCC 456*** , it has been observed in Para Nos. 11 & 15 as under:

“11. The question is whether in a case of this nature, where the postal endorsement shows that the notice could not be served on account of the non-availability of the addressee, a cause of action may still arise for prosecution of the drawer of the cheque on the basis of deemed service of notice under clause (c) of proviso to Section 138 of the Act. In our view this question has to be answered by reference to the facts of each case and no rule of universal application can be laid down that in all cases where notice is not served on account of non-availability of the addressee, the court must presume service of notice.

15. We cannot also lose sight of the fact that the drawer may by dubious means manage to get an incorrect endorsement made on the envelope that the premises has been found locked or that the addressee was not available at the time when postman went for delivery of the letter. It may be that the address is correct and even the addressee is

available but a wrong endorsement is manipulated by the addressee. In such a case, if the facts are proved, it may amount to refusal of the notice. If the complainant is able to prove that the drawer of the cheque knew about the notice and deliberately evaded service and got a false endorsement made only to defeat the process of law, the court shall presume service of notice. This, however, is a matter of evidence and proof. Thus even in a case where the notice is returned with the endorsement that the premises has always been found locked or the addressee was not available at the time of postal delivery, it will be open to the complainant to prove at the trial by evidence that the endorsement is not correct and that the addressee, namely, the drawer of the cheque, with knowledge of the notice had deliberately avoided to receive notice. Therefore, it would be premature at the stage of issuance of process, to move the High Court for quashing of the proceeding under Section 482 of the Code of Criminal Procedure. The question as to whether the service of notice has been fraudulently refused by unscrupulous means is a question of fact to be decided on the basis of evidence. In such a case the High Court ought not to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure.”

20. In ***Uhav Balim Adawale V/s. Babruwan Papanarsh Gaikwad; 2017***

(6) Bom. C. R. 55 : 2018 (3) All M.R. 718, the Coordinate Bench of this Court observed in Para Nos. 13 & 14 as under:

13. Rule 18 requires the serving officer to submit a return in the form of endorsement stating therein the particulars of service. Rule 17 which deals with service by affixing is already dealt with earlier. If the summons is served by affixing as per the Rule 17 and if the return is not verified on affidavit by serving officer, the Court is under an obligation to examine the serving officer on oath. If the return is verified on affidavit by the serving officer, the examination of the serving officer is not mandatory, but it is at the discretion of the Court. Only after examination as aforesaid and after making such further inquiry in the matter as it thinks fit, the Court can either declare that summons has been duly served or may order fresh service. The officer entrusted with the responsibility of service of summons is under an obligation to file a return contemplated by Rule 18 of Order V which is not the requirement of the Rules of the Postal department. If an officer of the Court makes an

incorrect or false statement in the return, the Court can initiate action against him. That is why the Apex Court has made a distinction between the responsibilities of a process server and a postman. As far as process server is concerned, he is always an officer of the Court (except in the city of Bombay where service is effected through the bailiffs attached to the office of the Sheriff). He is under an obligation to make a return making endorsement as required by Rule 18. In case defendant refuses to accept or declines to accept the summons, he is bound to file a return verified by an affidavit. If he does not verify the return on the affidavit, the Rules mandate that the Court shall examine him on oath.

14. *As pointed out earlier, when summons or notice is issued by Registered Post A.D. By invoking Rule 9 of Order V, there is no specific provision either in the said Code or in the Appellate Side Rules which deals with the contingency where the postal article containing the summons or notice is returned with remark "intimation posted" and "unclaimed" or "not claimed". The Sub-Rule (5) of the Rule 9 of Order V which provides that in certain cases the Court shall declare that the summons has been duly served significantly does not cover a case where the summons or notice issued by Registered Post A.D. is returned with remark "intimation posted" and "unclaimed" or "not claimed". Now the question is whether in such a case the presumption under Section 27 of the General Clauses Act or Section 114 of the Evidence Act can be invoked. Such presumption is held to be a rebuttable presumption. Essentially a presumption is a rule of evidence and the question of invoking presumption arises only after parties adduce evidence. The presumption under both the sections is a rebuttable presumption. The presumption is a rule of evidence which can be applied only after the parties adduce evidence inasmuch as only at that stage, there is an opportunity to rebut the presumption. When it comes to service of summons or notice as required by the said Code, at the stage of service of summons or notice, the Court cannot invoke the presumption either under Section 27 of the General Clauses Act or under Section 114 the Evidence Act and hold that the service effected in such manner is a good service. The decisions which hold such service as "good service" are rendered in relation to the service of statutory notice by the landlord to the tenant or notices exchanged between the parties. In these cases, such presumption was invoked after the parties adduced evidence. Therefore, when summons or notice of the Court issued by Registered Post A.D. is returned with a remark "intimation posted" and "not claimed" or "unclaimed", the same cannot be accepted as a good service. The reason*

is that at that stage there is no scope to invoke the rebuttable presumption. As pointed out earlier, apart from the fact that the presumption as aforesaid is a rule of evidence, even assuming that there is a proper service of an intimation, the postal authorities do not keep the postal articles in the post office for more than few days and the same are returned to the sender. In case of the Defendant who is away for more than few days, even if he visits the post office for collecting the postal article, he will not get the postal article if it is already returned. It is pertinent to note that while substituting the Rule 9 of Order V of the said Code, though the legislature has expressly provided that if a postal article containing the summons is received back with an endorsement of refusal, the same shall be treated as good service, there is no such provision made in a case where summons or notice issued by Registered Post A.D. is returned with a remark "intimation posted" and "not claimed" or "unclaimed". Therefore, in such a case, the service of summons or Court notice cannot be treated as a good service. The settled law of invoking presumption of service of notice by landlord to the tenant will not apply to service of summons or notice.

21. In ***M/S Ajeet Seeds Ltd vs K Gopala Krishnaiah; AIR 2014 SC 3057***,

the Hon'ble Supreme Court has held in para nos.9 & 10 as under:

9. This Court then explained the nature of presumptions under Section 114 of the Evidence Act and under Section 27 of the GC Act and pointed out how these two presumptions are to be employed while considering the question of service of notice under Section 138 of the NI Act. The relevant paragraphs read as under:

"13. According to Section 114 of the Act, read with Illustration (f) thereunder, when it appears to the Court that the common course of business renders it probable that a thing would happen, the Court may draw presumption that the thing would have happened, unless there are circumstances in a particular case to show that the common course of business was not followed. Thus, Section 114 enables the Court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public

and private business in their relation to the facts of the particular case. Consequently, the court can presume that the common course of business has been followed in particular cases. When applied to communications sent by post, Section 114 enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. But the presumption that is raised under Section 27 of the G.C. Act is a far stronger presumption. Further, while Section 114 of Evidence Act refers to a general presumption, Section 27 refers to a specific presumption. For the sake of ready reference, Section 27 of G.C. Act is extracted below:

“27. Meaning of service by post.- Where any Central Act or regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression ‘serve’ or either of the expressions ‘give’ or ‘send’ or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post”.

14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice

is sent by registered post and is returned with a postal endorsement 'refused' or 'not available in the house' or 'house locked' or 'shop closed' or 'addressee not in station', due service has to be presumed. [Vide Jagdish Singh Vs. Natthu Singh (1992) 1 SCC 647; State of M.P. Vs. Hiralal & Ors. (1996) 7 SCC 523 and V. Raja Kumari Vs. P.subbarama Naidu & Anr.; (2004) 8 SCC 74]. It is, therefore, manifest that in view of the presumption available under Section 27 of the Act, it is not necessary to aver in the complaint under Section 138 of the Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved."

10. It is thus clear that Section 114 of the Evidence Act enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. Section 27 of the GC Act gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. It is not necessary to aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business.

22. In ***K. Bhaskaran vs Sankaran Vaidhyan Balan And Anr;***(1999) 7 ***SCC 510***, it has been held that there is no significant difference when the notice is returned as "unclaimed" and not as "refused". It was further held that under Section 27 of the General Clauses Act, there would be a presumption of service in such cases and that it is up to other party to rebut this presumption of service of notice by post although the said case was under Section 138 of the

Negotiable Instruments Act, but the principle in such matter regarding service of notice will be applicable in the instant case also.

23. In the case in hand the learned Magistrate had allowed to send the notice through Registered Post Acknowledgment Due to the Petitioner at his Official address as well as at his residential address. The envelope containing notice which was sent at residential address of the Petitioner did not return, but the envelope containing notice sent on official address of the Petitioner returned with endorsement that the addressee "Refused to Accept". The Petitioner himself stated at the relevant time he was serving as Veterinary Medical Officer at Nimgaon Dhawadi. Therefore, in the instant case also, in view of the above endorsement it can safely be said that presumption would be that the notice was served on the Petitioner and he failed to rebut the said presumption rebuttal. There is no specific provision that the non-applicant in criminal or quasi civil proceeding can only be served at his residential address. Since, the Petitioner refused to accept the envelope containing notice means that he was duly served with notice and he got the knowledge about the proceeding. Therefore, in my view, submissions canvassed on behalf of the Petitioner are not acceptable in this regard.

24. Further, Petitioner contended that his father Respondent No.1 was having sufficient source of income as his father was having agricultural land

and was drawing sufficient income, however, the Petitioner failed to demonstrate that his father Respondent No. 1 has sufficient income for his livelihood. Moreover, the Respondent Nos. 2 & 3 who are more than 88 & 78 years old parents of the Petitioner are unable to do any work. Therefore, they are unable to maintain themselves. Merely production of 7/12 extract of the land does not automatically proves that the Respondent Nos. 1 & 2 having sufficient means to maintain themselves. Needless to say, the present Petitioner is one of the defendants in R.C.S. No. 225 of 2014 filed by the present Respondent Nos. 4 & 5 before the learned Civil Judge Sr. Divn., Shrigonda and the present Petitioner has attended said proceeding. As such Misc. Cri. Appln. 23 of 2017 was pending before the learned Judicial Magistrate, Shrigonda. Therefore, it is not acceptable that the Petitioner was not having any knowledge of pendency of Misc. Cri. Appln. 23 of 2017. On the contrary it appears that after service of notice in recovery proceeding the Petitioner filed Criminal Revision, which shows ill motive of the Petitioner.

25. In so far as ground no. (iii) is concerned, the Respondents Nos. 2 & 3 fairly stated that their sons i.e. present Respondents Nos. 4 & 5 are looking after them and maintaining them to some extent, however, they are in need of more maintenance from the present Petitioner for whose education they have incurred expenses and made him capable to become a Government Veterinary

Medical Officer. It is quite clear that the Petitioner superannuated w.e.f. 31st May, 2023. Therefore, the Petitioner has received all retiral benefits and is also receiving monthly pension. The Petitioner has also drawn salary under the 7th pay commission. Therefore, ground set out that he has no source of income is not acceptable to my judicious conscience. On perusal of impugned order dated 03.06.2023, passed by the learned Revisional Court as well the judgment and order dated 23.10.2021, delivered by the learned Judicial Magistrate show that both the Courts below have considered the oral and documentary evidence and thereafter passed the order, which do not appear to be perverse. Though the counsel for Petitioner has relied on cases cited supra, but he failed to point out how the ratios laid down in cited cases are relevant and applicable to the facts of the present case. Therefore, no interference is called at the hands of this Court to disturb said findings. Therefore, this petition deserves to be dismissed.

26. Since, the Petitioner himself kept away from participating in legal proceeding initiated by his old aged parents for grant of maintenance and after the recovery order u/s 128 of the Cri. PC., the Petitioner knocked the door of the learned Revisional Court by filing Revision, which was ultimately dismissed. Therefore, the Petitioner made his father to move from pillar to post and

compelled them to incur expenses towards the litigation. Therefore, it is necessary to award costs. Accordingly, I proceed to pass the following order:

ORDER:

- I. The Criminal Writ Petition is hereby dismissed with cost of Rs. 50,000/- payable by the Petitioner to the present Respondent Nos. 2 & 3 within a period of 4 weeks from today.
- II. It is made clear that, if the Petitioner fails to pay said amount within a period of 4 weeks in that event the said amount would be recoverable in the recovery proceeding initiated u/s 128 of Cri. P. C. with interest @ 9% per annum from the date of this order.
- III. The Rule is discharged.

[Y.G. KHOBRADE, J.]

1. After the judgment is pronounced, the learned counsel appearing for respondent nos.2 & 3 / original applicants have filed present application seeking permission to withdraw the amount which has been deposited by the present petitioner in this Court. It is taken on record and marked Exh.'X' for identification.

2. Needless to say that the present petitioner is the original – non applicant no.1 and the respondent nos.2 & 3 are original applicants in Criminal

M.A. No.23/2017. The respondent nos.2 and 3 are parents of the present petitioner and they claimed maintenance under Section 125 of the Cr.P.C. against the present petitioner and respondent nos.4 and 5. On 23.10.2021, the learned trial Court passed the judgment and directed the present petitioner to pay Rs.6,000/- towards maintenance. The said order was confirmed by the Revisional Court in Criminal Revision Application No.25 of 2022 vide order dated 03.06.2023. Therefore, the petitioner filed in Cri. M.A. filed this petition. In pursuance of order dated 17.07.2023 passed by this Court the present petitioner / original non-applicant deposited Rs.50,000/-.

3. Since the criminal writ petition is already decided on merits, therefore, the amount of Rs.50,000/- deposited by the petitioner / original non-applicant no.1 is hereby directed to pay to the respondents / non-applicant nos.2 and 3.

4. The said amount be paid after verification of their identity i.e. Aadhar Card or Voter ID (Election) card.

[Y.G. KHOBRADE, J.]