



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

911 CRIMINAL REVISION APPLICATION NO. 321 OF 2025

Shaikh Ali Pasha s/o Shaikh Aslam,
Age- 30 years, Occu- Carpenter,
R/o Rehmat Nagar, Near Hamja Majjid,
Nanded, Tq. And Dist. Nanded

... APPLICANT

VERSUS

1. Praveen Begum w/o Shaikh Ali Pasha,
Age- 27 years, Occu- Household
2. Alfisha Begum d/o Shaikh Ali Pasha,
Age- Minor, Occu-Student,
U/G of Respondent No.1- Mother
3. Kahenkasha Begum d/o Shaikh Ali Pasha,
Age- Minor, Occu- Nil, U/G of Respondent
No.1- Mother,
4. Aayesha d/o Shaikh Ali Pasha,
Age- Minor, Occcu- Nil, U/G of
Respondent No.1-Mother,

All R/o c/o; Sayyad Matin,
Momin Pura, Parbhani,
Taluka and Dist. Parbhani

...RESPONDENTS

(Orig. applicants No. 1 to 3)

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Advocate for Applicant : Ms Bodke Patil Poonam V.
Advocate for Respondent Nos. 1 to 4 : Mr. Shaikh Tarek Mobin H.

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CORAM : ABHAY J. MANTRI, J.

DATE : 24.09.2025.

ORAL JUDGMENT :

1. The applicant-husband being aggrieved by the judgment dated 28.06.2024, passed by the learned Judge of the Family Court, Parbhani, in Petition - E No.-169 of 2020, whereby granted maintenance to the respondents of Rs. 4,000/- p.m. from the date of the application.
2. Heard the learned Advocates for both parties and perused the impugned judgment and record.
3. At the outset, it appears that respondent No. 1, being the wife and respondents Nos. 2 to 4, the children, have filed an application under Section 125 of the Code of Criminal Procedure for the grant of maintenance against the applicant. After considering the evidence on record, the learned Judge has held that the applicant has to pay a maintenance amount of Rs. 4,000/- p.m. to the respondent No. 1- wife, and Rs. 2,000/- p.m. each to the respondent Nos. 2 to 4, and accordingly passed the impugned order.
4. Learned Advocate for the applicant has vehemently contended that no opportunity has been given to the applicant to contest the matter, which shows that the learned Judge has not followed the procedure prescribed under Section 126 (2) of the Code of Criminal Procedure. She further argued that evidence was not recorded in the presence of the applicant and, therefore, the passing of the

impugned order is liable to be set aside, and the matter needs to be remanded.

5. To buttress her contention, she has relied upon the judgment in *Bhimappa Gagnappa Sonar Vs. Indirabai Kom Bhimappa Sonar* and drew my attention to paragraph No. 7 of the said judgment and submitted that in view of the observations made in the said judgment the learned judge has to record his satisfaction before passing ex-parte order that the respondent-husband wilfully neglected to attend the Court and non recording of the findings by the Judge the said order is liable to be set aside and hence urged for setting aside the impugned judgment and order.

6. *Per Contra*, learned Advocate for the respondents submitted that despite the service of notice, the applicant chose to remain absent. Therefore, it cannot be said that no opportunity was given to him while passing the order. Similarly, he distinguished the fact in the case of Bhimappa (supra), by pointing out that paragraph No. 7 of the said judgment and submitted that the observations made in the said decision are hardly of any assistance to the applicant in support of his contention. As such, he urged to dismiss the application.

7. It is pertinent to note that the applicant is not disputing his relationship with the respondents. Similarly, the applicant has not paid an amount for their maintenance, and the applicant and respondents

are residing separately. The applicant did not pay any amount prior to filing the application to them, and respondent No. 1 is unable to maintain herself and the rest of the respondents.

8. The thrust of the argument of the learned Advocate for the applicant is only that no opportunity was granted to the applicant to contest the application. Therefore, in view of the mandate in Section 126 (2) and observations made in the judgment in *Bhimappa* (supra), the order is liable to be set aside. However, on perusal of the impugned judgment, it is evident from paragraph No. 7 that notice was duly served on the applicant. Despite the service of notice, he did not appear nor contest the petition. The said fact itself indicates that the applicant willfully neglected to attend the Court. It is worth noting that it is not the case of the applicant that no notice was duly served on him, but it is only argued that the Magistrate has not recorded his satisfaction before passing an ex parte order. It is pertinent to note that after receipt of the notice, it was a bounden duty of the applicant to attend court proceedings. However, non-attendance at the court proceedings itself indicates that the applicant chose to remain absent, which leads to drawing the inference that the applicant willfully neglected to attend the court proceedings. Therefore, I do not find any substance in that regard. Apart from this, the facts in *Bhimappa* (supra) were that the respondent therein sought an adjournment, and the learned Magistrate

ignored the same and proceeded with the matter without recording his satisfaction; therefore, the court has set aside the said order and the matter was remitted back. However, in the case at hand, facts are distinct from the above. Therefore, the observations made in the judgment relied upon by the learned Advocate for the applicant are hardly of any assistance to her in support of her contention.

9. On perusal of the impugned judgment, it appears that the learned Judge, in paragraphs 12 to 14, has discussed in detail and held that the respondents have no source of income and that the applicant has driven them out of his home. In paragraph No. 13 of the judgment, the learned Judge discussed about the income of the applicant and held that the applicant is an able-bodied person and earns an amount of approximately Rs. 1,50,000/- p.m. The testimony of the applicant remained unchallenged, and therefore, there is no reason to disbelieve her testimony.

10. It is pertinent to note that Section 125 of the Code of Criminal Procedure is a social welfare provision, which must be subjected to an extensive beneficial concern, and this understanding has been extended to maintenance. Similarly, it must be borne in mind that the right to maintenance under Section 125 of the Code of Criminal Procedure is not a benefit received by the wife and children but rather a legal and moral duty owed by the husband to maintain his wife and

children. Undoubtedly, the wife and children do not reside with the husband, and the husband does not pay them anything for their maintenance. This itself is sufficient to grant maintenance to them.

11. In such an eventuality, even for the sake of argument, assuming that no opportunity was granted to the applicant, the fact remains that the respondents are residing separately and the applicant is not providing any amount of maintenance to them. In fact, the applicant is duty-bound to maintain his wife and children. It is his obligation to maintain them, and he cannot be permitted to plead that he is unable to maintain them, due to financial constraint, as long as he is capable of earning. Moreover, a judicial note can be taken that there are rises in prices of essential commodities. Therefore, the maintenance amount granted to the respondents also appears too meagre to satisfy their daily needs. As such, I do not find substance in the argument of the learned Advocate for the applicant.

12. Thus, on perusal of the impugned Judgment and order as well as the record, it appears that the applicant failed to maintain the respondents when he had sufficient means of income to maintain them. Hence, the order passed by the learned Judge is just and proper. The learned Advocate for the applicant has failed to point out that the impugned order is manifestly perverse or failed to show that the order is a sanctuary of errors. As such, I do not find any substance in the

arguments of the learned Advocate for the applicant in that regard.

13. As a result, the order passed by the learned Judge is justifiable; therefore, no interference is required in the impugned order under the revisional jurisdiction at the hands of this Court. Consequently, the application being devoid of merit, stands dismissed. No order as to Costs.

14. Inform the learned Family Court accordingly.

15. Needless to clarify, the applicant is directed to deposit the entire amount of maintenance before the Family Court, within eight (8) weeks from today. Failing which, the learned Judge of the family Court is to take appropriate steps against the applicant.

16. The Criminal Revision Application is disposed of in the above terms.

(ABHAY J. MANTRI, J.)