



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 343 OF 2025

Sayyed Aamir s/o Sayyed Akbar,
Age : 72 years, Occu : Labour,
R/o. Galli No.12, Bharat Nagar
Plot NO.6, Badi Masjid, Aurangabad

...Applicant

Versus

Sayyed Masim Bee d/o Shaikh Murad
(Sayyed Nasim Bee w/o Sayyed Aamir)
Age : 53 years, Occu : Household,
R/o. C/o. Shaikh Murad, AT Pirwadi
Post Varzadi, Tq. & Dist. Aurangabad

...Respondent

WITH
CRIMINAL APPLICATION NO. 3714 OF 2025
IN
CRIMINAL REVISION APPLICATION NO. 343 OF 2025

Mr. Amol P. Ghule Patil, Advocate for the Applicant.
None for the Respondent.

CORAM : ABHAY J. MANTRI, J.
DATE : OCTOBER 16, 2025

JUDGMENT :

1. The applicant-husband, being aggrieved by the orders dated 23rd November 2021 and 28th January 2025, passed by the learned Judge of the Family Court in Petition No. E-46 of 2017 and Criminal Miscellaneous Application No.22 of 2023, thereby allowed the petition No. E-46 of 2017 and dismissed the Criminal M.A. No. 22 of 2023 has preferred this revision application.

2. Heard learned advocate for the applicant and perused the impugned judgments and record.

3. At the outset, it appears that the respondent, being the wife of the applicant, filed a Petition No. E-46 of 2017 for the grant of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (For short- the “*Cr. P. C.*”) against the applicant. Despite service of notice, the applicant didn’t appear in the matter; therefore, the matter was proceeded ex parte against him. After considering the evidence on record, the learned Judge held that the applicant is an able-bodied person and therefore, liable to pay maintenance. Accordingly, the petition was allowed, and the applicant was directed to pay maintenance of ₹ 3,000/- per month to the respondent.

4. It further appears that the applicant did not challenge the judgment passed in Petition No. E-46 of 2017 at any time, however, by filing Criminal M.A. No.22 of 2023 under Section 127 of Cr. P. C. has filed an application for cancellation of the maintenance amount granted by the order dated November 23, 2021, passed in Petition No. E-46 of 2017, on the ground that the respondent has suppressed facts of filing Petition No. E-344 of 2005 against the applicant for maintenance and during Execution Petition No.ER/187 of 2006, they settled the matter out of the Court, and therefore, the respondent has withdrawn her recovery petition from the Court.

5. The learned Advocate of the applicant argued that on the same day, parties executed the Talaknama/Khulanama; thereby, the respondent

had accepted Rs. 25,000/- towards Meher amount/maintenance according to the Iddat. Therefore, he canvassed that the applicant had suppressed the said facts of the settlement of the matter between them. As such, the judgment passed in Petition No. E-46 of 2017 is liable to be cancelled. The petition was dismissed, and being aggrieved by this decision, he has challenged both orders in this revision.

6. It is pertinent to note that the applicant doesn't dispute his relationship with the respondent, and she is residing separately from him.

7. The learned advocate for the applicant vehemently contended that the applicant has suppressed a material fact of filing Petition No. E-344 of 2005 against the applicant for maintenance and during Execution Petition No. ER-187 of 2006, the matter has been settled between them out of the Court, and therefore, the respondent has withdrawn her recovery petition from the Court.

8. On the same day, they executed the Talaknama/Khulanama. He further contended that the respondent had committed fraud upon the court by suppressing the facts of the settlement of the matter between them; however, the learned Family Court did not consider the said fact in its proper perspective and erred in holding that the applicant is liable to pay maintenance to the respondent.

9. To buttress his submission, he has relied on the judgment of the Allahabad High Court in *Rajkumar v. State of U.P. and 2 Others* (order dated 14th

May 2024 passed in Application No.10290 of 2019) and drew my attention to paragraph 14 of the judgment, and the judgment of this Court in *Devendra Gurunath Khedgikar Vs. Tribe Certificate Scrutiny Committee & Anr.* (order dated 12th February 2009, passed in Writ Petition No.3739 of 2008 with connected petitions) and pointed out the head-note ‘C’ of the said citation and submitted that in view of the observations made in these judgments, the order passed under Section 125 may be final or interim, can be recalled or altered under Section 127 of Cr.P.C. and a person, whose case is based on falsehood, has no right to approach the Court, she can be summarily thrown out of any stage of the litigation. Therefore, he urged for allowing the application by setting aside the impugned judgments and order.

10. During arguments, the learned advocate for the applicant has taken me from the order passed in Criminal M.A. No.22 of 2023 and pointed out paragraph No.19 of the said order and submitted that the learned Judge has erred in holding that the said Court is not sitting in appeal or revision against the order passed in Petition No. E-46 of 2017. The learned Judge has further observed that the scope under Section 127 of Cr.P.C. is minimal and, as such, dismissed the Criminal M.A.; the said finding is contrary to the settled position of law. Hence, he urged for allowing the application.

11. Having heard the learned advocate for the applicant and perusal of the impugned judgments and record, at the outset, it appears that the respondent has filed the application under Section 125 of Cr.P.C. bearing

Petition No. E-46 of 2017 against the husband. Despite service of notice, he doesn't appear, and the matter was proceeded ex parte against him. The learned Judge, after considering the material on record, allowed the said application and directed the applicant to pay maintenance of ₹ 3,000/- per month to the respondent from the date of filing the application.

12. It is pertinent to note that the applicant did not challenge the said order, and therefore, said order attained finality. However, instead of challenging the said order, the applicant has filed an application under Section 127 of the Cr.P.C. for cancellation of the said order, as the applicant had suppressed the material facts regarding the filing of Criminal Application No. 344 of 2005 and Recovery Petition No.ER-187 of 2006, and the compromise took place between the parties, and therefore, he filed the said application.

13. Having considered the submissions of the learned advocate for the applicant, I would like to reproduce Section 127 of Cr.P.C.

“Section 127 Alteration in Allowance : (1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.]

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section

125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that—

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband, and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,—

(i) in the case where such sum was paid before such order, from the date on which such order was made;

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to [maintenance or interim maintenance, as the case may be,] after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a [monthly allowance for the maintenance and interim maintenance or any of them has been ordered] to be paid under section 125, the Civil Court shall take into account the sum which has been paid to, or recovered by, such person [as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of] the said order.

14. A bare perusal of Section, it appears that on proof of a change in the circumstances of any person, the Magistrate may make such alteration in the maintenance amount awarded earlier, as he thinks fit. However, it

doesn't appear that if any person has suppressed the facts or committed fraud, it can be applied under Section 127 of Cr.P.C. to the Court, which was granted the same. Therefore, the finding recorded by the learned Judge in paragraph No.19 of the judgment that the Court is not sitting in appeal or revision against the order in Petition No.E-46 of 2017 is just and proper, as the scope of Section 127 is limited on the proof of change in circumstances only the application can be filed and none else than the reason the application can be filed in the said section. Therefore, the findings recorded by the learned Judge appear to be just and proper.

15. It further appears that earlier Petition No.E-344 of 2005 was filed by the respondent and her son under Section 125 of Cr.P.C., which was allowed on 24th March 2006, and thereby the applicant herein was directed to pay maintenance of ₹ 7,500/- per month to the respondent herein and her son respectively. Similarly, the respondent had filed an execution proceeding under Section 125(3) of the Cr.P.C. against the husband, and during the said proceedings, a settlement took place between the parties outside the Court. Accordingly, the respondent withdrew the said proceeding on 22nd August 2006.

16. No doubt, the respondent has to state the facts of the filing of the earlier proceeding and the execution proceeding, as well as the withdrawal of the same, due to a settlement that took place between them out of the Court. However, the said facts cannot be raised under Section 127

of Cr.PC before the Court, as Section 127 of Cr.P.C., there is limited scope to file the application *on the proof of change in the circumstances* of any person only Court can entertain the application and not for the fact as alleged by the applicant that the respondent has suppressed the facts of filing of the earlier proceedings from the Court.

17. It is pertinent to note that the Petition No. E-46 of 2017, filed by the respondent, was allowed on 23rd November 2021. After getting knowledge of the said order, the applicant has not challenged it in revision before this Court. Still, instead of that, he has preferred Criminal M.A. No. 22 of 2023, dated 18th July 2023, for cancellation of the order before the learned Family Court, under Section 127 of Cr.P.C., on the ground of suppression of facts, which is not permissible under Section 127 of Cr. P.C. After dismissal of the said application, he has preferred this application. He attempted to challenge the said order, as well as the order passed in Petition No. E-46 of 2017, although he had not previously challenged it, and it had attained finality. Similarly, he has not filed any application for condonation of delay in challenging the said order. He can independently challenge the said order along with an application for condonation of delay, but he has not chosen to challenge the order passed in Petition No.E-46 of 2017 along with the order passed in Criminal M.A. No.22 of 2023; therefore, I do not find any substance in his prayer to quash both the orders in this application.

18. Apart from that, Petition No.E-46 of 2017, the judgment and order passed on 23rd November 2021, the applicant has not challenged the same till the filing of this revision application, nor has the applicant filed any application for condonation of delay in filing the application to challenge the said order along with judgment and order passed in Criminal M.A. No.22 of 2023. Therefore, his application to challenge the order passed in Petition No. E-46 of 2017 cannot be entertained in the present application. In fact, it was incumbent on the applicant to challenge both the orders independently.

19. Besides perusal of Criminal Application No.3713 of 2025 for condonation of delay, it appears that the applicant has only explained the delay of 95 days caused by filing the criminal revision application from the date of the order, i.e. 28th January 2025, passed by the learned Family Court in Criminal M.A. No.22 of 2023. He has not given any sufficient cause or mentioned any delay in challenging the judgment and order passed in Petition No.E-46 of 2017. The said averment itself indicates that the applicant wants to challenge the order passed in Criminal M.A. No. 22 of 2023 only, and not Petition No. E-46 of 2017.

20. The conduct of the applicant shows that by filing an application for condonation of delay, he intends to explain the delay caused in filing the application against the judgment and order passed in Criminal M.A. No.22 of 2023, vide order dated 28th January 2025. He has not made any

avermment in respect of the judgment and order passed in Petition No.E-46 of 2017.

21. Similarly, in the grounds of the revision memo, the applicant has not raised any ground to challenge the judgment and order passed in Petition No.E-46 of 2017, but in the facts, he tried to aver that the respondent has suppressed facts of previous litigations from the Court.

22. On perusal of Criminal M.A. No.22 of 2023, it appears that the applicant has averred about the suppression of earlier proceedings filed by the respondents, while obtaining the order under Petition No.E-46 of 2017. Therefore, he has filed the application under Section 127 of Cr.PC. for cancellation of the said judgment and order, which is not permissible under the law, if he wants to challenge the said judgment and order passed in Petition No.E-46 of 2017, then the applicant has remedy to challenge the same in revision before this Court and not under Section 127 of Cr.PC. before the same Court. Still, as per the mandate in Section 127, if any change in circumstances occurs, then only it can be filed there, not for the suppression of facts while obtaining the order from the said Court, and therefore, I do not find substance in his contention in that regard.

23. Apart from the above facts, for the sake of the argument, even assuming that 'Khulanamawas executed between the parties, undisputably, the respondent has not performed remarriage after the 'Khula' from the applicant and is unable to maintain herself. The amount of Rs. 25,000/-

paid to her at the time of the 'Khula' is not sufficient for her lifetime. Furthermore, it is a settled position of the law that a divorced wife can claim maintenance. Additionally, the judge must be satisfied that the wife receives the entire amount at the time of divorce. Otherwise, in such circumstances, she is also entitled to claim maintenance. Besides, it was incumbent on the applicant to appear in the matter and contest the petition. However, despite service of notice, he didn't appear, and the matter was proceeded ex parte against him.

24. To sum up the above discussion, it appears that the applicant failed to challenge the order passed in Petition No.E-46 of 2017 before this Court in revision independently, but he filed application under Section 127 to cancel the said order on the ground of suppression of facts, which is not permissible under Section 127 of Cr.P.C. to pass the order by the same Court, and therefore, though according to the applicant, there is a suppression of facts made by the respondent in that eventuality he has the remedy to challenge the same independently before the higher Court and not before the same Court. Similarly, when filing the application for condonation of delay, he did not make any averments regarding the challenge to the judgment and order passed in Petition No. E-46 of 2017. Still, he has only made averment in respect of the judgment and order passed in Criminal M.A. No.22 of 2023, therefore also he failed to show that he intends to challenge the judgment and order passed in Petition No.E-46 of 2017,

merely incorporating the said facts in the prayer clause about challenging the judgment and order passed in Petition No.E-46 of 2017 would not suffice the purpose. Still, he has to challenge the said order independently before this Court. Therefore, the judgment and order passed by the learned Judge, Family Court in Criminal M.A. No.22 of 2023, appear to be just and proper, and no interference is required in the impugned order in the revision.

25. Mere inclusion of a challenge to the judgment and order passed in Petition No.E-46 of 2017 would not be helpful to the applicant in the absence of any pleadings and grounds raised in the application in that regard or challenging the said order independently in a separate proceeding.

26. Considering the above discussion and facts of the case, in my view, the ratio laid down in the above-cited judgments is of hardly any assistance to the applicant in support of his contentions, as the applicant has not challenged the judgment and order passed in Petition No.E-46 of 2017 independently before this Court. That being so, the application, being bereft of merit, stands dismissed with costs of ₹ 5,000/- to be deposited in the Court.

27. In view of the dismissal of the revision, nothing survives in the criminal application for stay; therefore, the same is disposed of accordingly.

(ABHAY J. MANTRI, J.)