



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 87 OF 2023

Ajaz Khan Jilani Khan

Age: 34 years, Occu.: Mobile Repairing,
R/o Khadakpura Mohalla, Manwat,
Tq. Manwat, Dist. Parbhani

..APPLICANT

VERSUS

1. Shaikh Sadaf Begum Ajaz Khan
Age: 27 years, Occu.: Household,

2. Khatija Ajaz Khan
Age: 7 years, Occu.: Education,
U/g of real mother Respondent No.1
Both R/o Asef Nagar, Dargah Road,
Parbhani, Tq. & Dist. Parbhani

..RESPONDENTS

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Mr. A.N. Barhate Patil, Advocate for the applicant
Mr. R.D. Khadap, Advocate for respondents

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CORAM : ABHAY J. MANTRI, J.
DATE : 03rd OCTOBER, 2025

ORAL JUDGMENT :

1. The applicant, husband of Respondent No.1 and father of Respondent No.2, is challenging the judgment and order dated 03rd December 2021, passed by the learned Judge of the Family Court, Parbhani, in Petition No. E-229 of 2020, whereby maintenance of Rs . 4,000/- and Rs . 2,000/- per month was granted to the respondents respectively from the date of the petition.

2. Heard learned counsel for the applicant and respondents and perused the impugned judgment and record.

3. At the outset, it appears that the respondents, being the wife and daughter of the applicant, have filed an application for the grant of maintenance under Section 125 of the Code of Criminal Procedure against the applicant. After considering the evidence on record, the learned Judge held that the applicant is liable to pay maintenance of Rs. 4,000/- and Rs. 2,000/- per month to the respondents respectively and passed the impugned judgment and order.

4. The learned counsel for the applicant contended that the applicant failed to file the say/reply to the petition. Therefore, he submitted that no opportunity was given to him to contest the application as such, urged for the grant of an opportunity to file the say/reply to the petition by remanding the matter to the family court. However, on perusal of the impugned judgment, it seems that in paragraph no.4, the learned Judge has categorically observed that the applicant appeared in the matter, but did not file a say/reply to the petition. Therefore, the petition was proceeded without his say/reply. It is not the case of the applicant that he was not aware of the pendency of the proceeding before the Family Court. However, the applicant appeared in the matter but did not file a say/reply in time, and therefore, the matter proceeded without his say. The said conduct of the applicant itself indicates that he willfully avoided filing a say/reply to the petition, though time was

granted to him. Therefore, I do not find substance in his contention that no opportunity was given to the applicant to file the say/reply. On the contrary, it reveals that after giving ample opportunity to the applicant, he failed to file a say/reply to the petition; hence, the application proceeded without a say.

5. The second limb of argument is that on 26th May, 2017 a *Khulanama* was executed between the applicant and Respondent No.1 and in paragraph no.2 of the *Khulanama*, Respondent No.1 agreed that in future she will not file any case for maintenance against the applicant and further consented to receive maintenance of Rs. 2,000/- per month to the daughter till she gets married. However, the learned Judge has not considered the said *Khulanama* in its proper perspective and erred in granting the maintenance, and therefore, he urged for setting aside the said order.

6. It is pertinent to note that on query put to him, he fairly submitted that there is no bar for filing the application, though *Khulanama* was executed between the parties. Similarly, he does not dispute that the divorced wife is entitled to maintenance. He has not paid any amount to Respondent No. 1- wife, nor has he paid any amount to Respondent No. 2- daughter.

7. It is pertinent to note that it is the husband's obligation to maintain his wife and children. He cannot be permitted to plead that he is unable to maintain them due to financial constraints as long as he is capable of earning, nor can he say that, based on the terms and conditions of the *Khulanama*, he is not liable to pay them. It is to be noted that the husband

has to fulfil their day-to-day needs; he is duty-bound to provide maintenance to them to live their life as per his status. In such an eventuality, it is necessary to grant maintenance to them. As observed above, the applicant has sufficient means to earn the money. *Besides*, judicial notes can be taken that there is a rise in the prices of essential commodities. Therefore, the maintenance amount granted to the respondents also appears to be too meagre to satisfy their daily needs. Even assuming that in *Khulanama*, Respondent No.1 has agreed that she will not file any proceeding under Section 125 of the Code of Criminal Procedure against the applicant, however, there is no bar to claim the maintenance, and therefore, I do not find substance in the contention of learned counsel for the applicant in that regard.

8. Alternatively, learned counsel for the applicant submitted that the applicant is physically disabled and his leg disability is to the extent of 40% and pointed out the disability certificate (page no. 20) of the revision application. Therefore, a grant of maintenance by a learned Judge is exorbitant. However, perusing the evidence, it appears that the applicant is doing the work of a mobile repairer/mobile shop. It denotes that the applicant has sufficient means to pay the maintenance to the respondents; therefore, I do not find substance in the contention in that regard.

9. On perusal of the impugned judgment and order, it appears that in paragraph nos. 7 to 12, the learned Judge has considered the defence of the

applicant about the execution of Khulanama and after considering the same, as well as considering the judgments in *Vidhyadhar Vs. Manikrao and Anr. AIR 1999 SC 1441* and *Shamima Farooqui Vs. Shahid Khan, AIR 2015 SC 2025*, partly allowed the petition and granted maintenance of Rs. 4,000/- and Rs. 2,000/- per month to the respondents respectively. The order passed by the learned Judge appears to be based on an appreciation of the evidence on record. However, the applicant failed to point out that he does not have sufficient means to maintain the respondents, or the finding recorded by the learned Judge is perverse, or a sanctuary of errors, as such, no interference of this Court is warranted in the revisional jurisdiction. Having considered the same, I do not find substance in the contention of learned counsel for the applicant for interference in the revisional jurisdiction.

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 daughter but rather a legal and moral duty owed by the husband to maintain his wife and daughter. Undisputedly, the wife and daughter 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. Thus, perusing the record and the impugned order, it appears that the applicant has failed to maintain the respondents when he has sufficient means to maintain them. As such, the order passed by the learned Judge appears just and proper. Hence, I do not find substance in the contentions of learned counsel for the applicant to interfere in the impugned judgment and order

12. As a result, the revision application being devoid of merit, stands dismissed. No order as to costs. Inform the order to the learned Family Court.

(ABHAY J. MANTRI, J.)

SSD