



Judgment

361 revn42.21

1

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL REVISION APPLICATION NO.42 OF 2021

1. Shaheba Farheen w/o Abdul Haque,
aged:49 years, occupation teacher.
2. Wasiya Samin d/o Abdul Haque, aged:
23 years, occupation: student.
3. Sadiya Muskan d/o Abdul Haque,
aged: 18 years, occupation: student.
4. Mohammad Tauqeer d/o Abdul Haque,
aged: 16 years, occupation: student.

Applicant No.4 is a minor and has filed
the present application through his
Mother/Guardian i.e. applicant No.1.

All the applicants are residing at Asir
Colony, Walgoan Road, taluka and
district Amravati (Police Station Gadge
Nagar Amravati).

..... **Applicants.**

:: VERSUS ::

Abdul Haque s/o Mohd Safi, aged
about: 48 years, occupation: business
and agriculturist residing at Chaprasi
Pura, Camp Amravati (Police Station
Frezarpura Amravati).

..... **Non-applicant.**

**Shri Rahul Dhande, Counsel for Applicants.
Shri S.Raisuddin, Counsel for the Non-applicant.**

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 28/01/2025

PRONOUNCED ON : 24/02/2025

JUDGMENT

1. The present revision application is filed by the applicant/wife and children against the judgment and order dated 30.11.2020 passed by learned Judge, Family Court, Amravati in Application No.E-148/2014.

2. By the said judgment and order impugned, learned Judge of the Family Court granted maintenance to the applicant Nos.2 and 3 @ Rs.1500/- per month and applicant No.4 Rs.1000/- from the non-applicant. It is further directed that the non-applicant shall pay maintenance @ Rs.1500/- to applicant No.2 Wasiya from the date of application i.e. 30.12.2014 till 17.11.2020 i.e. till her marriage. The non-applicant was also directed to

3

pay maintenance @ Rs.1500/- to the applicant No.3 till she marries from 30.11.2020. The further direction was given to pay the maintenance to the applicant No.4 @ Rs.1000/- from 30.12.2014 till he attains majority.

3. Brief facts which are necessary for disposal of the revision application are as under:

Applicant No.1/Shahaba, is legally wedded wife of the non-applicant and their marriage was performed on 5.6.1997. From the said wedlock, the births of applicant Nos.2 to 4 took place. As per the allegations, applicant No.1 was ill-treated by the non-applicant and his family members and, therefore, she was constrained to leave the matrimonial house along with her children. She had filed an application before the Family Court bearing Application No.E-148/2014 claiming maintenance @ Rs.8000/- per month for applicant No.2 and Rs.5000/-

4

each for applicant Nos.3 and 4 to incur their expenses towards education. Learned Judge of the Family Court by order dated 27.3.2019 dismissed the application despite of the fact that applicant Nos.2 to 4 are children and unable to maintain themselves. The said order of the Family Court was challenged before this court in Revision Application No.160/2019 which was allowed on 7.2.2020 directing the non-applicant to deposit an amount of Rs.1.00 lacs before the Family Court by way of interim maintenance and the Family Court was directed to consider the proceedings under Section 125 of the Code of Criminal Procedure afresh. The applicant filed pursis vide Exh.71 contending before the Family Court that she would adopt her earlier evidence and also entered into witness box for filing additional documents as to the expenses of education of her children. The Family Court without considering the evidence granted maintenance by

5

directing to pay a very meager amount. Being aggrieved and dissatisfied with the same, the present revision is preferred by the applicants.

4. Heard learned counsel Shri Rahul Dhande for the applicants and learned counsel Shri S.Raisuddin for the non-applicant.

5. Learned counsel for the applicants invited my attention towards the evidence of applicant No.1 adduced vide Exh.30 and submitted that the evidence of the applicant shows that the non-applicant is having sufficient means to maintain himself as well as the applicant Nos.2 to 4. The applicant No.1 though is serving as a Teacher in a college, she has to incur the expenses towards rent of the accommodation and expenses towards education of the children. The applicant No.2 at the relevant time was studying in B.Sc. Final Year, applicant No.3 was studying

6

in 11th Std. and applicant No.4 was studying in 8th Std.. The non-applicant is running Auto Deals and Travels as “Safal Travels”. He is also having an agricultural land and thus having sufficient means.

6. The cross examination of applicant No.1 shows that she is drawing salary of Rs.50,000/- per month and in the year 2013 she was getting salary of Rs.45,000/-. It was suggested that she has no documentary evidence to show that she is residing on rental basis which she has admitted. She has also admitted that she purchased one plot for consideration of Rs.7,20,000/- and now she is residing in the house constructed on her plot. She further admitted that she has not filed any documentary evidence in respect of “Safal Travels”.

7

7. Besides her oral evidence, she relied upon 7/12 extract showing the name of the non-applicant as owner of the agricultural land to the extent of 80R.

8. The non-applicant has also adduced his evidence and denied the contentions. It is stated by him that the applicant No.1 is working as a Teacher in the Government School and drawing salary of Rs.50,000/- and is residing in her own house. He is doing the private labour work and earns Rs.5000/- to Rs.6000/- and, thus, he is not having sufficient means to give the maintenance amount to the applicant Nos.2 to 4.

9. Learned Judge of the Family Court had considered the entire evidence and held that as far as refusal/neglect is concerned, there is sufficient evidence on record to show that the applicant No.1 was refused and neglected by the non-applicant. The evidence of the applicant NO.1

8

on the point of refusal and neglect is remained unshattered. As to the sufficient means, learned Judge of the Family Court held that the applicant No.1 is earning handsome amount which is increased subsequently but as far as the non-applicant is concerned, he is doing the labour work and granted maintenance as the aforesaid.

10. After hearing both the sides and perusing the entire evidence on record, as far as refusal and neglect are concerned, the applicant filed on record the certified copies of the complaint filed by her which is at Exh.40. The statements of the witnesses recorded by the police also substantiated the contention that the applicant No.1 was ill-treated and constrained to leave the matrimonial house.

11. Coming to the aspect of sufficient means, learned Judge of the Family Court has considered that the non-

applicant is doing labour work and earning Rs.5000/- to Rs.6000/- and accordingly granted maintenance.

12. Section 125 of the Code is meant to achieve a social purpose. The object is to prevent destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. When an attempt is made by the husband to negate the claim of the neglected wife for one or the other reason, the court has to ascertain from the evidence.

13. The Hon'ble Apex Court in the case of **Mohd.Abdul Samad vs.. The State of Telangana, reported in (2024) SCC OnLine SC 1686** has observed that, "in this context, I would like to advert to the vulnerability of married women in India who do not have an independent source of income or who do not have access to monetary resources in their households particularly for their

10

personal expenses. In Indian society, it is an established practice that once a daughter is married, she resides with her husband and/or his family unless due to exigency of career or such other reason she has to reside elsewhere. In the case of a woman who has an independent source of income, she may be financially endowed and may not be totally dependent on her husband and his family, whatsoever and is totally dependent for her financial resources on her husband and on his family.

14. In the case of **Chaturbhuj vs. Sita Bai, reported in 2008(1) Mh.L.J. (Cri) 644** while interpreting phrase “unable to maintain herself”, the Hon’ble Apex Court held that same phrase would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow.

11

15. Thus, the object of maintenance proceeding is to be taken into consideration. The provision of maintenance aims at empowering the destitute and achieving social justice or equality and dignity of the individual and while dealing with cases thereunder. The inherent and fundamental principle behind Section 125 of the Code is the amelioration of the financial state of affairs as well as the mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home.

16. In view of Section 125 of the Code, the children, who are unable to maintain themselves, being minor, are also entitled for grant of maintenance.

17. In the case in hand, though the non-applicant claimed that he is working as a labour and is not having sufficient means to grant maintenance, the documents filed on record show that he is holding an agricultural

12

land as well as he filed one criminal complaint vide Criminal Case No.70/2015 against one Ganesh Aushikar wherein he specifically stated that he runs in Auto Deal and Finance Business. In a private complaint filed by him against one Dheeraj Bhoyar, also he has stated that he is running business under the name and style as “Nirdishta Pratishtan”. Exh.49 is the certified copy of the complaint filed by the non-applicant in the court CJM at Amravati and Exh.48 is the certified copy of the FIR lodged by the non-applicant. These two documents are not considered by learned Judge of the Family Court while granting maintenance.

18. It is not disputed that at the relevant time all three children were taking education. The applicant No.2 was taking education in college and was admitted for graduation in B.Sc. and other two applicants were also taking education. There is no dispute that the applicant

13

No.1 was serving as a Teacher and drawing salary of Rs.45,000/- to Rs.50,000/-. At the same time, she has to incur the expenses towards the education of the children, towards their food clothing, and their basic needs. These aspects ought to have been considered by learned Judge of the Family Court while granting the maintenance. Admittedly, the non-applicant has not come before the court with clean hands and made a false statement that he is doing labour work which is contrary to his pleading in Exhs.48 and 49.

19. The right of unmarried daughters to claim maintenance is extended till they marry so also as to the rights of the son of getting maintenance till he attains majority and becomes independent.

20. Thus, the applicant Nos.2 to 4 are entitled for grant of maintenance.

14

21. Admittedly, there is no exact evidence as to the actual income of the non-applicant, but considering the said evidence, some guesswork needs to be done.

22. Considering the non-applicant is running business of travells, amount of Rs.5000/- to the applicant No.2 from 30.12.2014 to 17.11.2020, till she marries, would be in the interests of justice. The applicant No.3 who is taking education is also entitled for maintenance from 30.12.2014 @ Rs.8000 till she performs marriage and the applicant No.4 who is taking education is also entitled for maintenance @ Rs.8000/- till he attains the majority and becomes independent.

23. For all above these reasons, the judgment and order impugned stands modified by allowing this revision partly. Hence, following order is passed:

ORDER

(1) The Criminal Revision Application is **allowed partly**.

15

(2) The non-applicant shall pay maintenance @ Rs.5000/- to applicant No.2 Wasiya from the date of application i.e. 30.12.2014 to 17.11.2020 i.e. till her marriage.

(3) The non-applicant shall pay maintenance @ Rs.8000/- to applicant No.3 Sadiya from the date of application i.e. 30.12.2014 till she performs marriage.

(4) The non-applicant shall also pay maintenance @ Rs.8000/- to applicant No.4 from the date of application i.e. 30.12.2014, till he attains the majority and becomes independent.

(5) The non-applicant shall also pay the costs of the application of Rs.5000/-.

Revision stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

...../-