



Judgment

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

CRIMINAL APPLICATION APL NO.1366 OF 2025

Omprakash s/o Shriram Rahate,
aged about 47 years,
occupation : business,
r/o plot No.39, Old Subhedar Layout
Extension, Nagpur. **Applicant.**

:: VERSUS ::

Ku.Gargi d/o Omprakash Rahate,
aged about 20 years, occupation student,
through her Guardian Mother
Smt.Vijaya d/o Baburao Fulzele,
aged about 50 years, r/o flat No.201
Shri Krushna Apartment, Nara Road,
Nirmal colony, behind water tank,
Post-Mankapur, Shambhu Nagar,
Nagpur. **Non-applicants.**

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Shri I.S.Charlewar, Counsel for the Applicant.
Shri V.S.Dhore, Counsel for the Non-applicant.

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CORAM : URMILA JOSHI-PHALKE, J.

DATE : 14/01/2025

ORAL JUDGMENT

1. The present application is preferred by the applicant for quashing of the order passed by the Family Court No.5, Nagpur in

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Petition No. Cri.M.A.No.23/2016 enhancing maintenance amount granted to the non-applicant No.2 @ Rs.12,000/- per month from the date of application and directing to pay Rs.10,000/- towards expenses of litigation.

2. Brief facts of the case are as under:

The non-applicant/petitioner is daughter of the applicant. On 27.8.2010, she has filed a petition for maintenance which came to be allowed on 8.10.2012 and accordingly amount Rs.2000/- per month was awarded to her. Thereafter, she has filed ER No. 22/2014 for recovery of maintenance amount. However, the applicant has not complied with the order of maintenance.

3. The non-applicant is suffering from “Sickle Cell” for which on several occasions, she was admitted in hospital. For her medical treatment, her mother spent huge money. She is also taking education. Considering medical and educational expenses, amount Rs.2000/- per month is very meager and, therefore, she filed an application for enhancement of maintenance under Section 127 of the CrPC. The Family Court considered evidence on record and came to conclusion, that though her mother is incurring expenses,

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her father who also owes duty to incur expenses towards medical treatment and education of the non-applicant child, enhanced the amount of Rs.10,000/- and total amount granted was @ Rs.12,000/-. This order is challenged on the ground that the applicant has filed an affidavit showing Assets and Liabilities before the Family Court wherein he has specifically stated that his monthly income is Rs.25,000/- to Rs.30,000/- and out of the said income, he has to incur Rs.15,000/- per month his towards medical expenses and he is suffering from several diseases including “Blood Pressure” and “Diabetes”.

The applicant has further challenged the said order on the ground that the mother of the non-applicant is serving in “Western Coal Fields Limited” and drawing handsome salary and she is able to pay the maintenance to the non-applicant and, therefore, the order passed by the Trial Court is erroneous and illegal and liable to be quashed and set aside.

He has also challenged the order of the Family Court on the ground that despite there was no evidence, as to income of the

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applicant, the amount granted as maintenance is exorbitant one and liable to be quashed and set aside.

4. *Per contra*, learned counsel for the non-applicant submitted that the Family Court has considered the entire evidence on record and rightly held that the applicant is running coaching classes and drawing handsome income from the said coaching classes. He owes duty towards his daughter and, therefore, the order of the Family Court is just and legal one and no interference is called for.

5. Learned counsel for the applicant has taken me through the entire material and the order passed by the Family Court and submitted that considering the applicant is suffering from various ailments, he has to incur expenses towards his ailment and in absence of the evidence, the order passed by the Family Court is exorbitant and excessive one and, therefore, the application deserves to be allowed.

6. After going through the material on record, there is no dispute as far as relationship between the applicant and the non-applicant is concerned. The evidence adduced by the non-applicant through her mother shows that due to the matrimonial

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dispute between the husband and wife, the mother of the non-applicant started residing separately. It is not disputed that the mother of the non-applicant is serving in WCL and drawing handsome salary. It is also not disputed that she is incurring expenses towards medical treatment of the non-applicant. The initial petition was allowed in the year 2012 by granting maintenance @ Rs.2000/- per month towards maintenance of the non-applicant. In the year 2016, another application is filed by non-applicant for enhancement of the maintenance as her educational expenses are hiked as well as she has to incur expenses towards her ailment. The Family Court has considered the entire material on record and documents filed by the applicant as well as the non-applicant. The Family Court has considered that the applicant has placed reliance on medical certificate and Discharge Summary issued by "Vairagade Hospital" and various medical certificates issued to him by the Medical Officer. The Family Court has also considered the evidence on record, which shows that the applicant is running coaching classes and drawing handsome salary. The Family Court has also considered the evidence that the mother of the non-applicant is also serving in WCL and earning

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handsome salary. The documentary evidence placed on record and cross examination of the applicant show that one Electric Bill was shown to him and he has admitted that it is in respect of plot No.39, Old Subhedar Layout, Nagpur. He has also admitted that he himself is to pay the Electric Bill. However, he has specifically denied that the same Electric Bill for the month of August 2024 was for amount of Rs.60,680/- and for the month of July 2022 it was for amount of Rs.1,03,370/-.

7. Thus, considering the entire evidence on record and considering the fact that the applicant is running coaching classes and is drawing income from the same and having landed property, despite considering that he is suffering from ailment like “Blood Pressure” and “Diabetes”, it is clear that he is having sufficient means to pay maintenance granted by the Family Court. The amount of maintenance is granted by the Family Court by considering that day-by-day the educational expenses are increasing. The non-applicant has to incur expenses towards her maintenance as well as towards her educational expenses and towards her medical expenses. Undisputedly, she is suffering from

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“Sickle Cell, since her birth and, therefore, medical expenses are to be incurred for the medical treatment also. Even, considering that the mother of the non-applicant is getting handsome salary and also getting medical reimbursement, the Family Court has rightly considered that the legal obligation for maintenance of child primarily rests on father regardless of mother’s financial capacity and, therefore, considering the nature of treatment, which the non-applicant requires, educational expenses, and prices of essential commodities are touching to the sky, the amount of maintenance is enhanced.

8. In view of the above, as I do not find any illegality in the order passed by the Family Court, the application is devoid of merits and deserves to be rejected and the same is **rejected**.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)