
(1987) 02 BOM CK 0005
In the Bombay High Court
Case No : Criminal.W.P. No. 107 of 1986

Vishnupant Narharrao Baraskar	Vs	APPELLANT
Pandit Vishnupant Baraskar and others		RESPONDENT

Date of Decision : 20-02-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 125, 126, 126(1)

Citation : (1987) MhLj 325

Hon'ble Judges : P.V. Nirgudkar, J

Bench : Single Bench

Advocate : M.K. Pisolkar for P.R. Deshmukh, for the Appellant; R.S. Parundekar and S.V. Kulkarni for Respondent No. 1 and P.G. Godhamgaonkar, for the Respondent

Judgement

P.V. Nirgudkar, J.—The petitioner Vishnupant has filed this Criminal Writ Petition against his two sons and Union of India in respect of order passed by Judicial Magistrate, First Class, Ambejogai quashing the proceedings for maintenance filed by him u/s 125 of the Code of Criminal Procedure.

2. Brief facts need be stated to appreciate the controversy of this unfortunate litigation, unfortunate because it is between father and sons. Father Vishnupant had made an application against his two sons Pandit and Anil for maintenance u/s 125 of the Code of Criminal Procedure in the Court of Judicial Magistrate, First Class, Ambejogai Admittedly, father resides at Ambejogai whereas Pandit is in service at Aurangabad and Anil at Nasik.

3. Vishnupant had made application for interim maintenance and the learned Judicial Magistrate took the view that interim maintenance can be granted but he further held that Judicial Magistrate, First Class, Ambejogai has no jurisdiction to entertain application u/s 125 of the Code of Criminal Procedure because, according to him, the application should have been filed where the sons reside in view of language of Section 126(1) of the Code of Criminal Procedure. He,

therefore, quashed the proceedings for want of jurisdiction and it is against that order the present Criminal Writ Petition has been preferred.

4. Now, the short question which arises in this criminal writ petition is whether the Court of Judicial Magistrate, First Class, Ambejogai had jurisdiction to entertain application for maintenance filed by the father u/s 125 of the Code of Criminal Procedure. Sub-section 111 of Section 126 reads thus -

Proceedings u/s 125 may be taken against any person in any district at where he is. or

(b) where he or his wife resides, or

(e) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.

5. The section nowhere prohibits that the father must make an application where the son resides. If the wife can make application where she resides, one fails to understand why the section should not be liberally construed for the purpose for which it is meant for and why it should not be held that father, mother or even the adult disabled child can make application when father, mother or such child resides. We cannot take a very narrow interpretation when the Legislature has in its mind liberal interpretation. Miss M. K. Pisolkar relied on the decision in Ananth Gopal Pai vs. Copal Narayan Pai. 1985 Cri. L J. 152. which is also consistent with the view taken by me. Even under Article 226 of the Constitution of India, I think that the Judicial Magistrate. First Class. Ambejogai can be directed to proceed with the case for the ends of justice and decide the case according to law.

6. Hence order:

The order of the learned Judicial Magistrate, First Class, Ambejogai quashing the proceedings is set aside and the learned Judicial Magistrate, First Class. Ambejogai is directed to decide the case according to law.