

**HIGH COURT OF MADHYA PRADESH :  
JABALPUR**

1	Case No.	Criminal Revision No. 704/2015
2	Parties Name	Pradeep Jain Vs. Smt. Manjulata Jain Modi and another
3	Date of Judgement	05/07/2018
4	Bench Constituted on Hon'ble Justice..... and Hon'ble Justice.....	Single Bench
5	Judgement delivered by Hon'ble Justice.....	Hon'ble Ms. Justice Vandana Kasrekar
6	Whether approved for reporting	Yes
7	Name of counsels for parties	Shri Amit Khatri, learned counsel for the applicant. None for the respondents.
8	Law laid down	"Whether the children of the first husband of the wife is entitled to get maintenance under Section 125 of the Cr.P.C." Held - No.
9	Significant paragraph numbers	9 and 10

**HIGH COURT OF MADHYA PRADESH : JABALPUR**  
**SINGLE BENCH : JUSTICE MS.VANDANA KASREKAR**

**Criminal Revision No. 704/2015**

Pradeep Jain

**Vs.**

Smt. Manjulata Jain Modi & another

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Shri Amit Khatri, learned counsel for the applicant.

None for the respondents.

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**ORDER**

**(05.07.2018)**

The applicant has filed the present revision challenging the order dated 01.11.2014 passed by Principal Judge Family Court, Bhopal in M.Cr.C. No. 47/2014 thereby allowing the application preferred by the non-applicants under Section 125 of the Cr.P.C.

2. Both, the applicant and non-applicant No. 1, had earlier got married and their marriages were not successful, therefore, they have entered into second

marriage with each other. Applicant from his earlier marriage has two children i.e. a daughter and a son and non-applicant No. 1 from her earlier marriage has a daughter i.e. non-applicant No. 2. The marriage of applicant and non-applicant No. 1 was solemnized on 06.12.2008. From this second wedlock the applicant and non-applicant No. 1 have no issue. The non-applicants had filed an application under Section 125 of the Cr.P.C for grant of maintenance on 17.04.2014. Non-applicant No. 1 has also filed an application for grant of *pendente lite* maintenance. The case of non-applicant No. 1 was within a period of six months from the date of solemnization of marriage between applicant and non-applicant No. 1, disputes arose between them. It was averred that the applicant suffered loss in his diamond business and, therefore, pressurized the non-applicant No. 1 to bring money and other valuables from her parental home. On 11.07.2013, the applicant manhandled the non-applicants, he used to give physical and mental torture to bring the

more money from the parental home of non-applicant No. 1 failing which the applicant would leave them. It had become impossible for non-applicant No. 1 to leave with the applicant, therefore, they left the matrimonial house of the applicant and stay at her brother's house along with her daughter. The non-applicants, thereafter, filed an application under Section 125 of the Cr.P.C for grant of maintenance to the tune of Rs. 17,000/- per month i.e. Rs. 10,000/- for herself and Rs. 7,000/- for her daughter which includes her tuition fees. In the application it was stated that the non-applicant No. 1 does not have any source of income to maintain herself and daughter also. It was also stated that the applicant is earning approximately Rs.80,000/- per month from his business and other sources.

**3.** Upon receipt of notice, the applicant has filed his reply and has denied all the allegations and contended that he is ready and willing to keep the non-applicants with him. He further stated that the behaviour of non-applicant No. 1 towards his family members and his children born

out of earlier marriage was not good. He also denied that he is earning Rs.80,000/- per month. He further stated that the applicant suffered motor accident due to which he has made him disabled and accordingly, he has also suffered huge loss in his business reducing his income to greater extent. The applicant has further contended that non-applicant No. 1 has passed her M.Com examination and is earning Rs.20,000/- per month as she is working as Accountant and is also imparting tuitions to various students.

4. After recording the evidence of both the parties, the Family Court vide order dated 01.11.2014 allowed the application filed by the non-applicants and directed the applicant to pay an amount of Rs.10,000/- to the non-applicant No. 1 and Rs.7,000/- to the non-applicant No. 2. Being aggrieved by that order, the applicant has filed the present revision.

5. Learned counsel appearing on behalf of the applicant submits that the amount awarded by the Family

Court is on higher side. He submits that after suffering from motor accident, his income has considerably reduced. He further submits that non-applicant No. 1 is educated lady and having M.Com degree and her own source of income and livelihood to maintain her. He further submits that the Family Court has erred in awarding the maintenance to non-applicant No. 2 as she is not his daughter. He further relied on the judgement passed by the **Punjab and Haryana High Court** in the case of **Annu Bala Vs. Dharam Pal, decided on 05.02.1996.**

6. Nobody appeared on behalf of the respondents even though the matter was called up for hearing in the second round, therefore, the matter was heard in absence of the counsel for the respondents.

7. Heard learned counsel for the applicant and perused the record.

8. From perusal of the record, it reveals that the short question which comes for consideration is whether the non-applicant No. 2 who is not the child of the

applicant is entitled to claim maintenance under Section 125 of the Code of Criminal Procedure from the applicant.

9. Section 125 of the Code of Criminal Procedure has been enacted to provide maintenance for destitute wives, parents and children who are not able to maintain themselves. This is to ameliorate their condition. The Sub-Section (1) of Section 125 of the Cr.P.C reads as under:-

“**125 (1)**- If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means”

As per the said section, it reveals that the legislative stress is on his wife, his legitimate or illegitimate child or his father or mother. When the stress is on the word 'his', it obviously means that it would include only the person who procreates, begets or brings forth



offspring. It will not include a child of another father or mother of another person.

**10.** In the present case, non-applicant No. 2 is the daughter of 1<sup>st</sup> marriage of non-applicant No. 1 and not of the applicant, therefore, the Family Court has erred in awarding the maintenance to non-applicant No. 2.

**11.** The Punjab and Haryana High Court in the case of **Annu Bala (supra)** in para 4 and 5 has held as under:-

“4. Perusal of the relevant provisions referred to above reveal that legislative stress is on his wife, his legitimate or illegitimate child or his father or mother. When the stress is on the word 'his', it obviously means that it would include only the person who procreates, begets or brings forth offspring. It will not include a child of another father or mother of another person. Very near to the facts of the present case is the Division Bench decision of this Court in Criminal Misc.

No. 18502-M or 1994, decided on 6.7.1995. The Division Bench was concerned as to if the step-mother who is not the mother of the person, is entitled to claim maintenance or not. The answer was given in the negative and the Division Bench observed as under :

"The Legislature has specifically mentioned the word "his father" or "mother" in Clause (d) of the section and wherever necessary it also specifically mentioned the word "legitimate" or "illegitimate" minor child. It also explained that wife" includes a woman who has been divorced." The fact that the term "step-mother" does not find mention in the entire body of Section 125 of the Code of Criminal Procedure goes to show that this summary provision of providing maintenance by incorporating it in the Code of Criminal Procedure was meant for the claimant or claimants defined or incorporated therein and with due respect we do not concur with the liberal interpretation contained

in Parbati @ Paro v. Khiali Ram and Ors., 1984(2) R.C.R. 506."

5. The same analogy would apply in the present case. The children of another have not been mentioned in the entire Section 125, Cr.P.C. nor any right has been conferred on them to claim maintenance. Therefore, the learned Additional Sessions Judge rightly rejected the claim of the petitioners."

Thus, in light of the aforesaid, the child of another have no right to claim the maintenance.

12. So far as, the maintenance awarded to non-applicant No. 1 is concerned, the Family Court after taking into consideration the entire evidence produced by the parties has awarded an amount of Rs.10,000/- to non-applicant No. 1. The contention of learned counsel for the applicant that the non-applicant No. 1 is a educated lady and is sufficiently earning for maintaining herself cannot be accepted in absence of any evidence. The applicant has

not produced any evidence to show that the non-applicant No. 1 is earning.

**13.** The Second contention of the applicant that after accident he is suffered disability and due to which he is not able to earn also cannot be accepted, in view of the fact that the applicant has not produced any certificate of permanent disability. The applicant is an engineer by profession. The Apex Court in the case of **Shamima Farooqui Vs. Shahid Khan, reported in (2015) 5 SCC 705** has held as under:-

“Grant of maintenance to wife has been perceived as a measure of social justice. An order under Section 125 Cr.P.C. can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able-

bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 Cr.P.C, unless disqualified, is an absolute right. Thus, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.”

14. Thus, in light of the aforesaid, the present revision is partly allowed. So far as, the part of the order passed by the Family Court by which the Family Court has awarded the maintenance to non-applicant No. 2 is hereby set aside and the amount of maintenance awarded to the non-applicant No. 1 is hereby upheld. Non-applicant No. 1 is entitled to get an amount of maintenance from the date of order passed by the Family Court.

**(Ms.Vandana Kasrekar)**  
**Judge**