

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL REVISION APPLICATION NO. 100/2026

(Shaikh Afsar Shaikh Akbar Vs. Ayesha Parvin Abdul Gafur @ Aayesha Parvin Shaikh Afsar & ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr./Ms. M. P. Kshirsagar, Advocate for

CORAM: M. M. NERLIKAR, J.

DATED : 09/06/2026.

Heard.

2. The applicant is challenging the judgment and order dated 15/01/2026 passed by the Family Court, Buldhana. The applicant is the husband of non-applicant No.1. The proceedings under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 was filed by the wife for granting maintenance to the original applicant Nos. 2 and 3 who are daughter and son of the applicant. The Family Court, Buldhana after appreciating the evidence, granted maintenance of Rs.4000/- each non-applicant Nos. 2 and 3 from the date of petition till its realization. Being aggrieved by the same, the present application has been filed under Section 439 of the BNSS.

3. I have heard the learned counsel for the applicant. The applicant submits that he does not have sufficient means to pay the maintenance amount. The applicant was initially having one auto rickshaw, however that was sold in order to pay the permanent alimony towards the future maintenance to wife as per “Khulanama” executed between the parties. She submits that at present the applicant is unemployed, therefore it would be very difficult to pay the maintenance amount. It was submitted that the Trial Court has not properly appreciated the evidence and failed to consider the income of the applicant. Maintenance granted to children i.e. Rs. 4000/- each is exorbitant. The applicant is ready to pay Rs. 3000/- as was agreed between the parties. Considering the precarious condition of the applicant, the maintenance amount at the most be reduced and granted as per “Khulanama”. Further, the wife has failed to prove that the applicant is in a position to pay the maintenance amount and therefore considering the findings of the Court which is contrary to the evidence on record the same does not sustain in law, therefore the judgment of the Family Court deserves to be set aside.

4. I have gone through the judgment as well as the documents placed before me by the applicant along with the application. It is not in dispute that the applicant is the husband of the non-applicant No.1. Out of said wedlock, non-applicant Nos. 2 and 3 are born. It further appears that on 19/06/2023, the present applicant and the non-applicant No. 1 executed “Khulanama” stating that the marriage between the parties has been dissolved. When “Khulanama” was executed at that time, Rs. 2,75,000/- was paid to the non-applicant No.1 as “Mehar” (towards future maintenance). After perusal of the “Khulanama”, it appears that the applicant has agreed to pay Rs. 3,000/- to the children as maintenance, however the applicant has admitted the fact that he has not paid even the said amount, and therefore the wife along with the children were constrained to file the proceedings under Section 144 of the BNSS.

5. After leading the evidence, the non-applicant No. 1 has duly proved that the applicant has failed to maintain non-applicant Nos. 2 and 3. It was also duly proved by the non-applicant No.1 that the applicant has neglected to maintain non-applicant Nos. 2 and 3. Admittedly, it

appears from the record that the non-applicant Nos. 2 and 3 are aged about 10 and 7 years respectively. It is a settled position of law that the father is having responsibility to maintain his minor children. The observations of the Karnataka High Court in the case of ***Sri Sunil Vs. Nimnish*** (decided on 17/11/2020) are relevant, where the Court specifically dealt with the issue as to whether a father can be absolved from paying maintenance citing his unemployment which was answered in negative. It has been held as under:-

“In this Court, respondent adhered to the contention that he is earning a very meager income by doing coolie work. Therefore, it is not possible for him to pay the amount as ordered by the Family Court.

This is an interesting case to address the question whether a father can shirk his responsibility from maintaining his minor son under the garb of doing Coolie job.

It's no secret that being a parent is one of the most challenging roles in the world. The relationship between a parent and their child is a unique bond that nurtures the holistic growth and development of a child. It lays the foundation for their behavior, personality, traits and values.

Strengthening the parent-child relationships requires work, mutual understanding and efforts, Parenting is a tough job, but by maintaining a close relationship and open communication with your children, parents can stay connected to them during all stages of life.

A Hindu is under a legal obligation to maintain his wife, his minor sons, his unmarried daughters and his aged parents, whether he possess any property or not. The obligation to maintain these relations is personal, legal and absolute in character and arises from the very existence of the relationship between the parties.

It is needless to observe that a father is under a personal obligation to maintain his minor child. Hence, factors like unemployment, earning a meager income can't be an excuse for not maintaining wife and children. He cannot shirk his responsibility from maintaining the family, in particular, his minor son under the garb of doing a coolie job.

It is perhaps well to observe that the power to make an order under Section 125 of Cr.P.C. is discretionary. This Court find it necessary to say only this much that High Court in exercising its revisional powers should not interfere with the discretion of a Judge acting within his jurisdiction unless the Court is clearly satisfied that he was wrong.

In the present case, respondent has not satisfied the onus of showing that the discretion of the Judge had been wrongly exercised. A Judge's order granting maintenance is a typical exercise of purely discretionary powers, and would be interfered with by the High Court only in exceptional cases."

6. In view of the above, the maintenance amount granted by the Family Court i.e. Rs. 4,000/- each to non-applicant Nos. 2 and 3, in my opinion cannot be said to be exorbitant. Further, I do not see any perversity or error in the impugned judgment and order. Therefore, I do not find any merit in the present application, hence the same is dismissed.

(M. M. NERLIKAR, J.)