Married Daughters Are Obligated to Maintain Their Parents: Bombay High Court

The Bombay High Court has said that a married daughter is obligated to maintain her parents in a case where parents filed an application seeking maintenance from their eldest son under Section 125(1)(d) of the Code of Criminal Procedure, which gives courts the right to compel someone to maintain their parents provided that they have sufficient means to do so.

In the current case, *Vasant vs. Govindrao Upasrao Naik, Criminal Revision Application No. 172/2014*, the High Court rejected the contention that a married daughter has obligations only towards her husband's family and not to her own parents. **"In the instant case, married daughter proved to have been working as a Software Engineer in USA and having sufficient means, is under an obligation to maintain her parents,"** it said.

Image Source

The court's reasoning was as follows: “Though the Joint Committee recommended that if there are two more children the parents may seek the remedy against any one or more of them, the same appear to have not been accepted by the Parliament in its infinite wisdom, and that is why the same is not inserted in the provision of Section 125 Cr.P.C. It thus remained only a recommendation and did not crystallize into law. **Insofar as the present case is concerned, what is seen is that the eldest son has prima facie shown that the married daughter and the younger son have been earning lordly sums by way of income and because of the dispute with the eldest son and his wife, the parents have sought maintenance from him only, without joining the married daughter and younger son to the proceeding.**”

The High Court has ordered a new trial in this case, stating that the parents should include their daughter and youngest son in their application, because it will be in the best interests of justice.

This decision is very crucial and progressive, because it questions the idea that a married woman's in-laws are supposed to be more important to her than her actual parents. Moreover, it challenges the notion that women cannot be providers, and puts them on an even keel with men as far as financial responsibilities are concerned.

Case law

Bombay High Court

Vasant S/O Govindrao Naik vs Govindrao Upasrao Naik And ... on 2 February, 2016

Bench: A.B. Chaudhari

revn.172.14

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT NAGPUR, NAGPUR.

...

CRIMINAL REVISION APPLICATION NO. 172/2014

Vasant s/o Govindrao Naik

Aged 38 years, occu: service

R/o Saudi Polydlefins Company
Tansnee Petrochemical Laboratory Department
P.O. Box No. 35579, at Jubail Industrial City

Jubail-31961
Postal Code -31961,
Kingdom of Saudi Arabia (KSA)
...APPLICANT

v e r s u s

1) Govindrao Upasrao Naik

Aged 64 years, occu: Nil.

2) Sou. Mankarnabai w/o Govind Naik
Aged 58 years, occu: household.

Both R/o Prabhu colony,

Mahadeo Khori Road,

Amravati, Tah.& Dist.Amravati. .. ...RESPONDENTS

.....
.....

Mrs.R.P.Khaparde, Advocate for the applicant

Mrs. S.P.Deshpande, Advocate for respondents

.....
.....

CORAM: A.B.CHAUDHARI, J

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DATED : 2nd February, 2016

JUDGMENT:

Being aggrieved by the judgment and order dated 27.08.2014 in Petition No.E-35/2013 passed by the learned Principal Judge, Family Court, Amravati, by which the applicant has been directed to pay Rs. 20,000/- per month each, totalling to Rs. 40,000/- from the date of filing of the Application i.e. 4.3.2013, to the father and mother of the applicant (original petitioners), the instant Revision has been filed.

FACTS:

2. The respondents herein, that is, applicants before the Family Court, Amravati - Govind and Mankarnabai, filed an Application under Section 125 of the Code of Criminal Procedure, 1973 against the present applicant-Vasant, their son, for grant of maintenance in the sum of Rs. 20,000/- per month each, from the applicant. In their Application, they stated that they are the parents of the present applicant and have been residing in the house of their daughter Rajani in Prabhu Colony, Amravati. The applicant-son Vasant is serving in a high position in Saudi Polydlefins Limited, a Company in Saudi Arabia and receiving an eye-popping salary in the sum of Rs. 3 lakhs per month. The applicant-Vasant is the elder son possessing qualification of M.Sc. in Petrochemicals. Daughter-Rajani is married and resides inrevn.172.14 United States of America (USA); while the younger son-Chandan is an unemployed youth, resides with non-applicants-father and mother. The non-applicants incurred huge expenses on the education of the children by selling 16 acres of land and purchased another three acres of land from the remaining amount. Till the marriage of the applicant-Vasant he was supporting the parents but after the marriage he stopped giving any monetary help and, on the contrary, tortured them, claiming an amount of Rs. 2 lakhs for booking of a flat at Mumbai, ill-treated and threatened them and, as such, they were required to obtain temporary injunction order from the Civil Court to prohibit applicant-Vasant from entering their house at Amravati, vide an order dated 1.10.2012. The non-applicants are facing severe economic crisis and resource crunch inasmuch as they are on the verge of starvation and have no source of income and, as such, they require maintenance from the present applicant-Vasant. They had issued a notice to him on 31.10.2012 but false reply was sent by applicant-Vasant. The non-applicants reside at Prabhu Colony, Amravati and, therefore, the Amravati Court has jurisdiction to try the Application.

3. Applicant-Vasant filed his written statement and denied all the adverse allegations. He, however, stated that he was never revn.172.14 supported by his parents for completing his education and, on the contrary, the ancestral land was sold by the non-applicants, whereas money was spent on education of Rajani and Chandan. Rajani took education at Indore and Chennai who obtained a degree in Engineering.

Chandan took education in Indore in Engineering course. Rajani is a married daughter of non-applicants who is settled in USA and is earning Rs. 5 lakhs per month, while the younger son-Chandan is doing the business of estate broker at Armavati. Applicant-Vasant stated that he had purchased as many as six plots in the name of his younger brother-

Chandan and father out of love and affection since he is residing and serving at Saudi Arabia, but Chandan disposed of the plots and he has been doing business in estate broker from the sale proceeds. The objection was taken by the applicant-Vasant that the married sister Rajani and brother Chandan are also under legal obligation to maintain their parents and they should have been made parties to the petition for claiming maintenance and non-joining thereof and, as such, he stated that the application was liable to be dismissed, vide paragraph 9 of the written statement. It was then stated that the applicant-Vasant had spent around Rs. 20 to 25 lakhs for purchasing the land, plots, marriage of Rajani, repayment of hand loan of the relatives over the non-

applicants and the family members through bank transaction and he revn.172.14 has therefore performed his duty as a elder son. However, Rajani and Chandan are neglecting to perform their obligation towards the non-

applicants. Applicant-Vasant then stated in written statement that after the marriage, the non-applicants started ill treating his wife for flimsy reasons and they used to abuse her for not having brought sufficient dowry in the marriage.

The record shows that the applicant -Vasant has kept his family i,.e. wife and daughter at Washi, Mumbai, which is their permanent abode, while applicant-Vasant is residing at Saudi Arabia for his employment and he looks after his family at Mumbai. Along with the present Revision Application, Annexure 6 is annexed which shows that Rajani is working as Microsoft Dynamics CRM Consultant at Boca Raton, Florida (USA). The Family Court did not frame any issue/point about the non-joinder of Rajani and Chandan as a parties to the proceeding/Petition. The issue about the territorial jurisdiction of the Family Court was also not framed. Ultimately, the Family Court recorded the evidence and made the impugned order which is challenged by means of the present Revision Application.

4. In support of the Revision, assailing the impugned judgment revn.172.14 and order, Smt.R.P.Khaparde, learned counsel for the revision -applicant-

Vasant, submitted that he is the eldest son of the non applicants -Govind and Mankarnabai and Rajani is the daughter and Chandan is the younger son, who are well-educated with very good earnings. Rajani is working as a Software Engineer in USA and is residing there permanently and earning not less than Rs. 5 lakhs per month, while Chandan is also Engineering Graduate, pursuing his career in the business of broking in real estate at Amravati, for which the applicant Vasant had contributed immensely though the wife and daughter of the applicant is living in Washi, Mumbai in a flat, the applicant for his employment is residing in Kingdom of Saudi Arabia and is maintaining his family at Washi, Mumbai. His salary is only to the extent of Rs.

1,78,000/-per month from which he has to maintain his family and himself. Learned counsel then contended that the applicant does not reside at Amravati, all the more so since the non-applicants have obtained an injunction order from entering their house in a Civil Suit.

The counsel for applicant submitted that the Amravati Court does not have territorial jurisdiction to entertain the proceeding in the light of Section 126 of the Cr.P.C. She relied decision in the case of Vijay Kumar Prasad vs. State of Bihar : AIR 2004 SC 2123, to buttress the submission that unlike wife and the child, the parents have not been revn.172.14 extended the facility to file Application u/s 125 of the Cr.P.C. at the place of their residence. Learned counsel for the applicant -Vasant then contended that the married sister Rajani and the younger son-Chandan, both earn handsome income from their avocation and and the objection taken by the applicant -Vasant for their non-joinder to the Application in paragraph 9 of the written statement, has been ignored by the learned Principal Judge Family Court. Learned counsel for the applicant-Vasant then contended that because of the family dispute i.e. the respondents quarreling and torturing the wife of applicant, over demand of dowry, out of sheer revenge, the non-applicants filed the Application only against him and not against the married daughter Rajani and the younger son-Chandan who also have an obligation to maintain their parents. Learned counsel then contended that the parents have stubborn antipathy and hatred for the present applicant-Vasant, whereas extra love and affection in favour of Rajani and Chandan and that is why they were not arrayed as respondents in the proceeding despite the fact that they are also obliged to provide maintenance to their parents. Learned counsel for the applicants, therefore, prayed for dismissal of the Application as not maintainable and, in the alternative, for sending the matter back to the Family Court for joining Rajani and Chandan as the non-applicants to the Application.

revn.172.14

5. Per contra, Smt.S.P. Deshpande, learned counsel for the respondents-father and mother submitted that the question about the territorial jurisdiction was never raised before the Family Court and the applicant cannot be allowed to raise the said issue for the first time.

Learned counsel for non-applicants then contended that the choice is of the parents/non-applicants as to against whom out of three children, the proceeding should be taken for claiming maintenance and, in the instant case, the respondents/parents who were entitled to make a choice among the three children, rightly decided to proceed against the applicant-Vasant. The non-applicants are, in law, entitled to do so. She relied on the decision in the case of Akham Joy Kumar Singh vs. Akham Ibobi Singh and others : (2005) 3 GLR 236, to support her contention. She then contended that Rajani is a married daughter, having gone to live in her matrimonial house, cannot be said to be under an obligation to maintain her parents and the obligation, at the most, should be of the two sons, but since the respondents have choice to claim maintenance from either of them, they filed the proceeding against Vasant, who is working in Kingdom of Saudi Arabia, earning royal and handsome emoluments. She, therefore, submitted that there is no substance in the instant Revision Application, which deserves to be dismissed and be dismissed with costs.

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6. The instant Revision Application raises three interesting questions of law, as under :-

(1) Whether in accordance with Section 126 Cr.P.C.

providing for procedure, the non-applicants who are the parents, could file their Application for grant of maintenance at the place of their residence, namely, Amravati and, if not, at which place such an Application should have been filed?

(2) Whether the married daughter-Rajani having source of income/ sufficient means, was obliged to provide maintenance to her parents/ non-applicants?

(3) Whether the married daughter Rajani and the son-Chandan of the non-applicants were necessary party to the Application/Petition u/s. 125 of Cr.P.C. that was filed by the respondent nos. 1 and 2 -mother and father ; and whether the parents could seek remedy against any one or more of the children?

7. Section 488(1) and (8) of the old Code of Criminal Procedure (Act V of 1898) read thus,revn.172.14 " 488: (1) If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-Divisional Magistrate or 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, at such monthly rate, not exceeding (one hundred) rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs."

(8) Proceedings under this section may be taken "488:

against any person in any District where he resides or is, or where he last resided with his wife, or, as the case may be, the mother of the illegitimate child."

It is thus clear that the above provisions did not enable the father or mother, unable to maintain themselves himself or herself, to apply for grant of maintenance. Sub-section (8) of Section 488 above provided for the territorial jurisdiction where the application could be instituted.

But, Section 125(1) (d) of the new Code of Criminal revn.172.14 Procedure 1973 enables father or mother, unable to maintain himself or herself to apply to have the order of maintenance.

Section 126(1) provides for the procedure, which reads thus :-

" 126: Procedure - (1) Proceedings under section 125 may be taken against any person in any District -

(a) where he is, or

(b) where he or his wife resides, or

(c) where he last resided with his wife, or as

the case may be, with the mother of the illegitimate child.

(2) All evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons -cases:

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the magistrate may thuink just and revn.172.14 proper.

(3) The Court in dealing with applications under section 125 shall have power to make such order as to costs as may be just."

From the reading of Section 125(1)(d), it is clear that the Code of 1973 provided remedy for father or mother unable to maintain himself or herself to claim maintenance. However,Section 126 providing for the territorial jurisdiction simultaneously does not show the forum where the father or mother could institute the Application u/s. 125 Cr.P.C. for maintenance, as was provided for wife and her children.

It is in the above context, in the case of Vijay Kumar Prasad (supra), the Hon'ble Apex Court held that the benefit given to the wife and children to initiate proceedings against husband at the place where the wife and children reside, is not given to the parents u/s. 126(1) of the Cr.P.C. 1973. It would be apt to quote paragraph Nos. 13 and 14 from the judgment, which read thus:

revn.172.14 "13. It is to be noted that clauses (b) & (c) of sub-section (1) of Section 126 relate to the wife and the children under Section 125 of the Code. The benefit given to the wife and the children to initiate proceeding at the place where they reside is not given to the parents.

A bare reading of the Section makes it clear that the parents cannot be placed on the same pedestal as that of the wife or the children for the purpose of Section 126 of the Code.

14. The basic distinction between Section 488 of the old Code and Section 126 of the Code is that Section 126 has essentially enlarged the venue of proceedings for maintenance so as to move the place where the wife may be residing at the date of application. The change was thought necessary because of certain observations by the Law Commission, taking note of the fact that often deserted wives are compelled to live with their relatives far away from the place where the husband and wife last resided together. As noted by this Court in several cases, proceedings under Section 125 of the Code are of civil nature. Unlike clauses (b) and (c) ofSection 126(1) an application by the father or the mother claiming maintenance has to be filed where the person from whom maintenance is claimed lives."

revn.172.14 Ultimately, the Hon'ble Apex Court in the case of Vijay Kumar Prasad (supra) held that the son being a legal practitioner in Patna High Court, the proceeding instituted by father at Sivan were not maintainable for territorial jurisdiction and were liable to be transferred to Patna.

8. In my respectful and humble opinion, looking to the disablement of old parents - father or mother to go and file Application u/s 125 Cr.P.C. at the place where the son or their children reside, would be practically denying them the benefit of provisions

of Section 125 for claiming maintenance which was inserted by way of clause (d) of sub-

section (1) of Section 125 Cr.P.C. for the first time, under the Code of 1973. But then as held by the Hon'ble Apex Court in the case of Vijay Kumar Prasad (supra), the provision of Section 126 does not extend that benefit to the parents. The issue is certainly of significance looked from the angle of the parents who are neglected by their children in order that they would be entitled to take the benefit of the provisions u/s 125 (1)(d) by providing justice at the doorstep. But then that is the domain of the legislature and except for making request, this Court can do nothing. Hence, a copy of this judgment is required to be sent to the Ministry of Law and Justice Department, New revn.172.14 Delhi.

9. Reverting back to Question No.1 raised before me by the learned counsel for the revision-applicant, at the outset, I find from the written statement and from the arguments before the Family Court that the applicant-Vasant had never raised the issue of territorial jurisdiction in terms of Section 126 or otherwise, before the Principal Judge, Family Court, Amravati and, on the contrary, he submitted to the jurisdiction of the said Court till the completion of trial and the delivery of judgment.

In my opinion, it would therefore be wholly improper to allow the applicant-Vasant to raise the issue of territorial jurisdiction for the first time before this Court and, therefore, I hold that the applicant Vasant is not entitled to object to the proceedings u/s. 125 Cr.P.C. before the Principal Judge, Family Court, Amravati and thus answer the above question accordingly.

10. As to Question No.2: The learned counsel for the respondents vehemently contended that the married daughter is not liable to maintain her parents since after marriage she has gone to live in her matrimonial house in the other family i.e. of her husband According to the learned counsel for the respondents the married revn.172.14 daughter has an obligation towards her matrimonial house, husband father-in-law and her children and therefore she cannot be held liable to maintain her parents. According to her, even the provision of Section 125 (1)(d) uses the word "his" and not "her". Without dwelling in any details, I find that the question raised by the learned counsel for the respondents is no more res integra and the Apex Court in Dr. Mrs. Vijaya Arbat vs. Kashirao Sawaui and another" (AIR 1987 Sc 1100, decided the same, firmly holding that the daughter also is liable to maintain her parents, without making any distinction of unmarried daughter or married daughter. It would be apt to quote paragraph nos.

6,8,10,12, and 13 which read thus:

"6. There can be no doubt that it is the moral obligation of a son or a daughter to maintain his or her parents. It is not desirable that even though a son or a daughter has sufficient means, his or her parents would starve. Apart from any law, the Indian

society casts a duty on the children of a person to maintain their parents if they are not in a position to maintain themselves. It is also their duty to look after their parents when they become old and infirm.

8. We are unable to accept this contention. It revn.172.14 is true that Cl.(d) has used the expression "his father or mother" but, in our opinion, the use of the word 'his' does not exclude the parents claiming maintenance from their daughter. Section 2(y) Cr.P.C. provides that the words and expressions used herein and not defined but defined in the Indian Penal code have the meanings respectively assigned to them in that Code. S.8 of the Indian Penal Code lays down that the pronoun 'his' in Cl.(d) of S.125(1),Cr.P.C. also indicates a female.

Section 13(1) of the General Clauses Act lays down that in all Central Acts and Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken to include females. Therefore, the pronoun 'his' as used in Cl.(d) of S.125(1), Cr.P.C. includes both a male and a female. In other words, the parents will be entitled to claim maintenance against their daughter provided, however, the other conditions as mentioned in the Section are fulfilled. Before ordering maintenance in favour of a father or a mother against their married daughter, the Court must be satisfied that the daughter has sufficient means or income of her husband, and that the father or the mother, as the case may be, is unable to maintain himself or herself.

10. The learned judge of the Kerala High Court did not refer in his judgment to the sentence which has revn.172.14 been underlined. It is true that in the first part of the report the word 'son' has been used, but in the later part which has been underlined the recommendation is that if there are two or more children the parents may seek the remedy against any one or more of them. If the recommendation of the Joint Committee was that the liability to maintain the parents, unable to maintain themselves, would be on the son only, in that case, in the latter portion of the report the Joint Committee would not have used the word 'children' which admittedly includes sons and daughters. .....

12. We are unable to accept the contention of the appellant that a married daughter has no obligation to maintain her parents even if they are unable to maintain themselves. It has been rightly pointed out by the High Court that a daughter after her marriage does not cease to be a daughter of the father or mother. It has been earlier noticed that it is the moral obligation of the children to maintain their parents. In case the contention of the appellant that the daughter has no liability whatsoever to maintain her parents is accepted, in that case, parents having no son but only daughters and unable to maintain themselves, would go destitute, if the daughters even though they have sufficient means refuse to maintain their parents.

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13. After giving our best consideration to the question, we are of the view that Section 125 (1) (d) has imposed a liability on both the son and the daughter to maintain their father or mother who is unable to maintain himself or herself. Section 488 of the old Criminal Procedure Code did not contain a provision like clause (d) of Section 125(1). The legislature in enacting Criminal Procedure Code, 1973 thought it wise to provide for the maintenance of the parents of a person when such parents are unable to maintain themselves. The purpose of such enactment is to enforce social obligation and we do not think why the daughters should be excluded from such obligation to maintain their parents."

11. In the light of the above dicta of the Apex Court I hold that Rajani, the married daughter if proved to have been working as a Software Engineer in USA and having sufficient means, is under an obligation to maintain her parents. The question is answered accordingly.

12. As to Question No.3: The learned counsel for the respondents contended that the decision of the Apex Court in the case of Dr.Mrs. Vijaya Arbat (supra) is also an authority for the proposition revn.172.14 that if there are two or more children, the parents may seek the remedy against any one or more of them. Learned counsel, therefore, submitted that it is the choice of the parents to seek remedy against one of the children and, in the instant case, the respondents-parents had filed the Application only against Vasant, he being the elder son, with which no fault can be found out. Learned counsel for the respondents also relied on the decision in the case of Akham Joy Kumar Singh (supra) rendered by the learned single Judge of Gowahati High Court, The relevant portion from paragraph 8 reads thus:

"8. ..... A plain reading of the law shows that Legislature has intentionally used the word 'any person' thereby definitely meaning that any of the several persons may be chosen and it is not obligatory on the part of the claimant seeking maintenance to name all the persons 'having sufficient means' to be proceeded against, or in other words, it is optional for a claimant to seek an order of maintenance from any of the several persons, if there are more than one, having sufficient means, 'having sufficient means' is the qualifying phrase for 'any person' notwithstanding. I repeat, from the reading of the law, it appears that there is nothing obligatory either on the part of the Magistrate or on the part of revn.172.14the person seeking relief under Section 125 Cr.P.C. to include all sons and daughters when the parents are claimants. It appears the claimant has an option to choose."

13. I have carefully perused the ratio of the decision of the Apex Court in the case of Dr. Mrs Vijaya Arbat (supra). The question that was raised and decided in that case was, whether in Application u/s 125 (1)(d) Cr.P.C. father was entitled to claim maintenance from his daughter (married) since Dr. Vijaya was married and was practising medicine at Mumbai. The question whether the parents could seek the remedy against any one or more of the children did not fall for consideration of the Apex Court since the same was neither raised nor decided. The Apex Court decided

in paragraph 12 and 13 in that judgment that the daughter cannot be excluded from the obligation to maintain the parents. The decision in the case of Dr.Mrs.Vijaya Abrat is not an authority for the said proposition. It is true that the report of the Joint Committee on the Criminal Procedure Code Bill, 1973 in paragraph 5, stated that if there there are two or more children, the parents may seek against any one or more of them. This paragraph 5 quoted by the Apex Court in Dr. Mrs. Vijaya Arbat, in paragraph 9, isrevn.172.14 being quoted hereunder:

"9. Much reliance has been placed by the learned counsel for the appellant on a decision of the Kerala High Court in Raj Kumari v. Yashodha Devi, 1978 Cri LJ

600. In that case it has been held by a learned single Judge of the Kerala High Court, mainly relying upon the report of the Joint Committee on the Criminal Procedure Code Bill,1973 that a daughter is not liable to maintain her parents who are unable to maintain themselves. The Joint Committee in their report made the following recommendations (para 5):

"The committee considers that the right of the parents not possessed of sufficient means, to be maintained by their son should be recognised by making a provision that where the father or mother is unable to maintain himself or herself an order for payment of maintenance may be directed to a son, who is possession of sufficient means. If there are two or more children the parents may seek the remedy against any one or more of them. (Emphasis supplied).

14. It is on the basis of the said recommendation of the Joint Committee, submission is being advanced that option is left with the revn.172.14 parents to choose the son or daughter against whom claim u/s. 125 Cr.P.C. Could be made as also held by the learned single Judge of the Gowahati High Court.

With due respect, I am unable to agree with the view taken by the learned single Judge of the Gowahati High Court that there is option available to the parents. The first reason is that though the Joint Committee in paragraph 5 recommended that if there are two more children the parents may seek remedy against any one or more of them, the same appear to have not been accepted by the Parliament in its infinite wisdom, and that is why the same is not inserted in the provision of Section 125 Cr.P.C. It thus remained only a recommendation and did not crystallize into law. Insofar as the present case is concerned, what is seen is that the applicant has prima facie shown that Rajani, the married daughter and Chandan, the younger son of the respondents have been earning lordly sums by way of income and because of the dispute with the eldest son applicant-Vasant and his wife, the parents have sought maintenance from him only, without joining the married daughter-Rajani and younger son-Chandan to the proceeding. In my opinion, allowing an option for the parents to choose any of them would be unjust and onerous only on one of the children revn.172.14 particularly when others are also earning that too handsomely. I hasten to clarify that I have neither recorded any finding nor any inference or conclusion which would affect any of the parties on merits of the dispute since I have

already said that this is my prima facie opinion that Rajani and Chandan are having sufficient means to maintain their parents and they should also have been asked to participate in the proceedings in question to place their side before the Family Court, with pleadings and evidences from all angles. But to say that they were not necessary parties because of the available option to the parents, would be doing severe injustice to only one son-Vasant, the revision-applicant. It will have to be further clarified that the only question decided by me is that they were the necessary parties to the Application along with applicant-Vasant and all of them are free to plead and prove before the Family Court as to the merits of the Application and claim against them for maintenance, about they having or not having sufficient means or neglect or refusal. I therefore, hold that the married daughter-Rajani and the younger son Chandan are necessary parties to the Application and answer the question accordingly.

15. The next question is what order should be passed in the instant Application. In my opinion, the non-applicants should be asked to revn.172.14 join Rajani and Chandan as party to the proceedings u/s 125 Cr.P.C.

along with the applicant-Vasant; and thereafter a fresh trial should be held for trying the application u/s 125 Cr.P.C., which would subserve the interest of justice. In the result, I make the following order:

ORDER

i) Criminal Revision Application No.172/2014 is partly allowed.

ii) The impugned judgment and order dated 27th august, 2014 in Petition No E-35/2013 made by the learned Principal Judge, Family Court, Amravati is quashed and set aside.

iii) The proceedings in Petition No. E-35/2013 are remitted de novo to the Principal Judge, Family Court, Amravati for addition of married daughter-Rajani and younger son-Chandan as parties to the proceedings and thereafter for holding a fresh trial and decide the same in accordance with law, by giving full opportunity to the respective parties.

iv) The proceedings be decided within a period of one year from today.

v) Copy of this judgment be sent to the Ministry of Law and Justice Department, New Delhi, for information.

vi) No order as to costs.

JUDGE