

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 252 OF 2002

Alvi Chaush S/o Sayeed Bakhude

Age : 45 Yrs., Occ. : Labour,

R/o : Katkat gate, Aurangabad.

..... APPLICANT/

[ORIGINAL RESPONDENT]

V E R S U S

1. Saleha begum W/o Alvi Chaush

Age : 35 Yrs., Occ. Household,

R/o : Bari Colony, Lane No. 3,

Aurangabad.

2. Aves S/o Alvi Chaush

Age : 12 Yrs., u/g of R – 1.

3. Amrin D/o Alvi Chaush

Age : 10 Yrs., u/g of R – 1.

4. Sofiyan S/o Alvi Chaush

Age : 8 Yrs., u/g of R – 1.

5. Faiza D/o Alvi Chaush

Age : 6 Yrs., u/g of R – 1.

..... RESPONDENTS/

[ORIGINAL PETITIONERS]

6. The State of Maharashtra

..... **RESPONDENT**

.....

None for Applicant.

Mr. V.P.Kadam, A.P.P. for R– 6 State.

None for R – 1 to 5.

.....

CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 11th MARCH, 2015

.....

ORAL JUDGMENT :

1. The learned counsel for the applicant is not appearing in the present matter since long. On 05/02/2015, nobody appeared for the applicant. That day, the Court has made clear that the matter could be dismissed. However, in order to give opportunity to the applicant, the matter was fixed on 26/02/2015. The matter was listed on 02/03/2015. On the said date also, nobody appeared for the applicant. Therefore, this Court passed order that the matter should be fixed on 11/03/2015 and if nobody appeared for the applicant, the Court will proceed in absence of the learned counsel for the applicant.

2. Heard Mr. V.P.Kadam, the learned A.P.P. for

respondent No. 6 – State. None for the applicant and respondent Nos. 1 to 5.

3. Respondent Nos. 1 to 5 were required to approach to the Family Court through Petition No. 50/2012 to claim their right of maintenance from the present applicant. Before the learned Judge of the Family Court, the applicant admitted his marriage with respondent No. 1 and also his fatherhood to respondent Nos. 2 to 5. However, he submitted that he gave Talak to respondent No. 1 on 01/07/2002 and it was sent by registered post.

4. The said aspect was duly considered by the learned Judge of the Family Court. The learned Principal Judge of the Family Court has recorded specific finding that the applicant has failed to prove the issuance of second notice. The divorce was denied by respondent No. 1. The learned Judge of the Court below in view of the authoritative pronouncement of Judgment of the Full Bench in the case of *Dagdu S/o Chotu Pathan Vs. Rahimbi Dagdu Pathan and others, 2002 ALL M.R. (Cri.) 1230*, in my view has correctly reached to the conclusion that the test which are laid down

by the Full Bench are not complied with and, therefore, the learned Judge of the Family Court has reached to the conclusion that the applicant has failed to prove Talak as alleged by him.

5. It is brought on record that the applicant has engaged himself in the business of screen printing and is having sufficient income. The said aspect, though denied by the applicant, has admitted that he is getting only ₹ 700/- [Rupees Seven Hundred] per month. The learned trial Court, therefore, granted maintenance @ ₹ 300/- [Rupees Three Hundred] per month each to respondent Nos. 1 to 5 from the date of the petition. Looking to the meagre amount of ₹ 300/- each to the present respondents and in view of the fact that the applicant has utterly failed to prove that he has given Talak to respondent No. 1 and coupled with the fact that he can not absolve his responsibility to maintain his son, there is no merit in the present Criminal Revision Application and hence it is dismissed.

[V.M.DESHPANDE, J.]

[J]

[J]

[J]

[J]

[J]

[J]

[J]

[J]

[J]

[J]

[J]

[J]

[J]

[J]

[J]

[J]

[J]

[J]

[J]