

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

CRIMINAL WRIT PETITION NO. 528 OF 2002

Gangadhar S/o Manika Huge

Age : 28 Yrs., Occ. : Agril.,

R/o : Police-Wadi, Tq. Loha,

Dist. : Nanded.

..... PETITIONER

V E R S U S

1. Rekhabai W/o Gangadhar Huge

Age : 26 Yrs., Occ. Household,

and Labour, R/o : Pendu (Bk.),

Tq. Palam, Dist. Parbhani.

2. The State of Maharashtra

..... RESPONDENTS

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Mr. P.G.Godhamgaonkar, Advocate
for the Petitioner.

Mr.D.R.Kale, A.P.P. for R - 2 State.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 9th FEBRUARY, 2015

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ORAL JUDGMENT :

1. Heard Mr. P.G.Godhamgaonkar, the learned counsel for the Petitioner. None for the respondent No. 1 though served.

2. The parties will be referred to as husband and wife for the convenience.

3. This Writ Petition is filed by husband against the order dated 28/06/2002 passed by the Judicial Magistrate First Class, Gangakhed in Criminal Misc. Application No. 25/1999, by which the learned Magistrate directed him to pay maintenance @ ₹ 300/- per month to the wife from the date of application together with Judgment and Order dated 16/11/2002 passed by the learned 2nd Additional Sessions Judge, Parbhani in Criminal Revision No. 84 of 2002, dismissing his Revision.

4. The wife filed proceedings u/s 125 of the Code of Criminal Procedure against the husband. By filing the said proceedings, the wife claimed maintenance from the husband.

5. It is stated in the application u/s 125 of the Code of Criminal Procedure that the wife is legally married with the husband and their marriage was solemnized as per the Hindu rites. Though she was maintained properly for a period of 2 years, subsequently the husband started giving ill-treatment to her in order to fulfill his illegal demand of ₹ 25,000/- [Rupees Twenty Five Thousand only], golden chain, etc.

6. The wife was assaulted by the husband and she was kept without food. The husband gave beating to the wife and drove her away from the matrimonial house. Thereafter, the wife tried to make her entry again in the matrimonial house with the help of some common friends. However, the said attempt of the wife also proved to be futile.

7. It was pointed out in her application by the wife that the husband is agriculturist having 18 Acres of land, out of which 5 Acres is irrigated land and he is taking cash crops like Sugarcane and Banana. Besides that, the husband is having 15 buffalows and used to carry milk business.

From the same, he earns about ₹ 1,25,000/- [Rupees One Lakh Twenty Five Thousand only] per annum.

8. The application of maintenance of the wife was contested by the husband. He admitted the marriage. However, he denied the demand and illtreatment. It was further pointed out in the Written Statement that on 26/03/1999, mutual divorce took place amongst them and divorce deed was executed. That time he has paid ₹ 1,10,000/- [Rupees One Lakh Ten Thousand only] to the wife and she has relinquished her claim.

9. The learned Magistrate, after considering the pleadings and the evidence on record, allowed the application filed by the wife vide Judgment dated 28/06/2002 and thereby directed that the wife is entitled to receive maintenance @ ₹ 300/- [Rupees Three Hundred only] per month from the husband.

10. The husband was dis-satisfied with the said verdict and, therefore, he filed Revision in the Court of the Sessions Judge at Parbhani. The learned Sessions Judge on

16/11/2002 dismissed the Revision.

11. Mr. Godhamgaonkar, the learned counsel for the petitioner submitted before this Court that in view of the divorce deed dated 26/09/1999, which was duly proved and which is at Exh. 29 on record and the proceedings filed on behalf of the wife were not maintainable. In order to buttress his submission, he relied upon the reported decision of this Court in the case of **Shrawan Sakharam Ubhale Vs. Durga Shrawan Ubale and others, 1990(1) Mh.L.J. 418.**

12. It is to be noted in the present case that the parties are governed by the Hindu Law. Both the Courts below have recorded specific and clear-cut finding that the petitioner/husband could not establish the custom prevailing in their caste, by which customary divorce can be given. In absence of any custom, any document purported to be the divorce deed, has no value in the eye of law. In that view of the matter, the submission of the learned counsel for the petitioner that in view of the divorce deed [Exh.29], the application itself is not maintainable can not be accepted. Further, the learned revisional Court has rightly observed

that the proceedings u/s 125 of the Code of Criminal Procedure were filed on 22/09/1999, whereas the divorce deed is executed on 26/09/1999. The learned trial Court, in the light of the admission given by the husband that he got the divorce deed executed because he wanted to perform second marriage, rightly recorded finding that the divorce deed got executed by the husband from the wife, can not be relied upon. Further, once the husband failed to point out the custom, the husband is dis-entitled to take any benefit from such customary divorce deed.

13. In that view of the matter, both the impugned orders do not suffer from any perversity. Hence, the present Writ Petition is dismissed. Rule discharged.

[V.M.DESHPANDE, J.]

KNP/Crim. W.P. 528.2002 - [J]

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