

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

CRIMINAL REVISION APPLICATION NO. 52 OF 2003

1. Sou. Geetabai W/o Motilal Pardeshi

Age : 27 Yrs., Occ. : Household,

R/o : Budram Panchayalal

Suryawanshi, At Post : Feerbawada,

Tq. Pulambri, Dist. : Aurangabad.

2. Amol S/o Motilal Pardeshi

Age : 7 Years.

3. Ravin S/o Motilal Pardeshi

Age : 5 Years.

4. Umesh S/o Motilal Pardeshi

Age : 3 Years.

Applicant Nos. 2 to 4 u/g of

Applicant No. 1.

..... APPLICANTS/
[ORIGINAL PETITIONERS]

V E R S U S

1. Motilal S/o Babulal Pardeshi

Age : 34 Yrs., Occ. Fishing

Business, R/o : At & Post :

Mulawad, Tq. Sindkhed,

Dist. : Dhule

..... RESPONDENT/
[ORIGINAL RESPONDENT]

2. The State of Maharashtra

..... RESPONDENT

.....

Mr. Santosh Mundhe h/f Mr. K.C.Sant,
Advocate for Applicants.

Mr. N.T.Bhagat, Advocate for R - 1.

Mr. V.D.Godbharle, A.P.P. for R – 2.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 2nd MARCH, 2015

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ORAL JUDGMENT :

1. The present Revision Application is directed against the Judgment and Order dated 08/10/2001 passed by the learned Principal Judge, Family Court, Aurangabad in Petition No. 822/2000, whereby the learned Principal Judge of the family Court dismissed the application filed on behalf of the applicants u/s 125 of the Code of Criminal Procedure for maintenance.

2. Heard Mr. Santosh Mundhe holding for Mr. K.C.Sant, the learned counsel for the applicants, Mr. N.T.Bhagat, the learned counsel for respondent No. 1 and Mr. V.D.Godbharle, the learned A.P.P. for respondent No. 2 –

State.

3. There is no dispute in respect of the fact of marriage between the applicant No. 1 and respondent No. 1, which was solemnized on 14/05/1994. It was also not in dispute that applicant Nos. 2 to 4 are born from the said wedlock.

4. The application u/s 125 of the Code of Criminal Procedure was filed before the Family Court on 14/12/2000, whereby the maintenance was claimed on the ground that respondent No. 1 is not taking any steps to provide maintenance to the applicants since they were forced to reside with the parents of applicant No. 1. The proceedings were contested by respondent No. 1.

5. The applicant No. 1 entered into witness box. She examined her father as witnesses, whereas respondent No. 1 also entered into witness box. From the witness box, for the first time, applicant No. 1 stated that she is not ready to cohabit with respondent No. 1 as respondent No. 1 has performed second marriage. There are no pleadings in the

entire proceedings about the factum of second marriage performed by respondent No. 1. The learned counsel for the applicants submitted that the second marriage was performed during the pendency of the proceedings. The said fact ought to have been pleaded by moving an application for amendment. Though strict rules of pleadings are not applicable, it being summary in nature, however there should be some foundation so as to afford opportunity to the other side to meet the case. Further, when the respondent No. 1 was in witness box, he has denied the said fact of second marriage. Thus, the burden was on applicant No. 1 to show that respondent No. 1 has performed second marriage. The said fact is important since legally married wife is entitled to have separate residence if she is able to point out that during subsistence of her marriage, her husband had performed second marriage. In that view of the matter, not proving second marriage, goes to the root of the matter.

6. Further, the father of applicant No. 1 has also admitted in his cross examination as under,

“ We are not ready to send petitioner in spite of the efforts of the respondent ” .

7. One of the submissions made by the applicant No. 1 is that respondent No. 1 used to send threatening letters to the applicant No. 1. The letters are not produced on record. Only xerox copies are produced on record along with list. The said letters are addressed to the father of the applicant No. 1. No explanation is given as to why original letters were not produced on record. In that view of the matter, the learned trial Court was right in refusing the maintenance to the wife.

In so far as the maintenance to applicant Nos. 2 to 4 is concerned, admittedly they are the sons of respondent No. 1. It is the duty of the father to maintain his sons. There is nothing on record either in the pleadings or in the evidence of respondent No. 1 that he had provided any amount of maintenance to his sons. Therefore, to that extent, the Judgment of the Family Court can not stand to the scrutiny of law.

8. According to the finding recorded by the learned Principal Judge of the Family Court, respondent No. 1 is running the business of fishing and is having sufficient means to maintain the applicants. Respondent No. 1 has not

pointed out anything on record about his income. Since there is specific and clear-cut finding given by the learned Family Court that respondent No. 1 is having fishing business, which is not at all challenged by respondent No. 1, the said finding has attained the finality. In that view of the matter, each of the applicant No. 2 to 4 are entitled for the maintenance @ ₹ 200/- [Rupees Two Hundred] per month from the date of the application, since it was the duty of the father to maintain his sons.

9. Hence, I pass following order.

(1) The present Revision Application is partly allowed.

(2) The Judgment and Order dated 08/10/2001 passed by the learned Principal Judge, Family Court, Aurangabad in Petition No. 822/2000 dismissing the claim of applicant No. 1 is hereby confirmed.

However, the Judgment and Order passed by the Family Court refusing to grant maintenance to applicant Nos. 2 to 4 is hereby

set aside.

- (3) The application u/s 125 of the Code of Criminal Procedure filed on behalf of applicant Nos. 2 to 4 is hereby allowed. Respondent No. 1 is directed to pay maintenance @ ₹ 200/- [Rupees Two Hundred] per month to each of applicant Nos. 2 to 4 from the date of the application till they attained majority.
- (4) In view of the disposal of present Revision Application, Criminal Application No. 1094 of 2003 also stands disposed of.

[V.M.DESHPANDE, J.]

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