

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

CRIM. WRIT PETITION NO.: 188 OF 2003

Arun S/o Yogiraj Tekale,
Age: 44 years, Occ: Agricultu5re,
R/o Kolhegaon, Tq. & Dist.
Osmanabad.

... **PETITIONER**

VERSUS

1. Suman W/o Arun Tekale,
Age: 37 yrs., Occ: Household,
R/o Shingoli, Tq. and Dist.
Osmanabad.
2. Saroja d/o Arun Tekale,
Age: 17 years, Occ: Education,
Minor under guardianship of
Respondent No.1.
3. The State of Maharashtra,
(Copy to be served on P.P.
High Court of Bombay Bench
at Aurangabad).

... **RESPONDENTS**

Mr. B. N. Patil, Advocate for the Petitioner.
Mr. U. H. Bhogle, APP for Respondent No.3.

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CORAM:-
DATED:-

T. V. NALAWADE, J.
2nd JULY, 2015.

JUDGMENT:

1. The petition is filed to challenge the judgment and order of Criminal Miscellaneous Application No.181 of 1999 and judgment and order of Criminal Revision Application

No.18 of 2001 and 22 of 2001. Heard learned counsel for the Petitioner.

2. The petitioner is the husband of Respondent No.1 and Respondent No.2 is the daughter of Respondent No.1 born from the petitioner. Maintenance application was filed under section 125 of Cr.P.C. by the present Respondents in the Court of Chief Judicial Magistrate, Osmanabad. It was contended that the husband had demanded money and articles and for that ill-treatment was given to the wife and then she was driven out of the matrimonial house. In the past, maintenance application bearing No.18 of 1987 was filed by the wife but as compromise took place between the parties and as the husband gave in writing to the wife that he was giving agricultural land bearing Gat No.219 (1 Acre 20 Ares portion) the matter was not prosecuted by the wife. It is her case that after that she resumed cohabitation but she was again driven out of the matrimonial house. It is her case that the husband did not allow her to cultivate the land and the compromise was not given effect by the husband. She contended that the husband owns more than 15 Acres of irrigated land and he earns Rs.5 Lakhs per annum from the land.

3. Present petitioner, husband contested the matter by filing reply. He contended that he did not marry with the present respondent in the year 1983 and she is not his legally wedded wife. He contended that he had married with one Shobha, daughter of Vasant Jadhav, resident of Kombadwadi, Tahsil and District Osmanabad on 17th May, 1979 and Shobha is his wife. It is his case that his eldest daughter from Shobha was born in the year 1983 i.e. before alleged marriage of Respondent with him. It is his case that there was love affair between him and the Respondent No.1 and out of this relationship Respondent No.2 Saroja was born. He denied the other contentions. Thus, he admitted the paternity of the daughter but he denied the relation with Respondent No.1.

4. Both the sides gave evidence. The husband examined his first wife. Chief Judicial Magistrate held that there was no legal marriage between the present petitioner and respondent No.1 and maintenance was refused to the wife. Maintenance at the rate of Rs.750/- was granted to the daughter. This decision was challenged by the present Respondents in Revision No.22 of 2001. The decision was challenged by the petitioner also by filing Revision No.18 of

2001. The Sessions Court held that there was sufficient material to prove the factum of marriage between present petitioner and the Respondent. Both the Revisions were partly allowed. The Sessions Court considered the so called compromise document and held that under that document provision of maintenance was already made by the present Petitioner and the wife is entitled to make income from that land. Maintenance granted in favour of the daughter was reduced to make it Rs.400/- per month.

5. The evidence on record shows that the petitioner is admitting that Respondent No.2 was born to Respondent No.1 from him. Though he has contended that there was only love affair, it is not disputed that applicant Saroja is using his name as father and Applicant No.1 is also using his name to show that he is the husband. Copy of previous maintenance proceeding bearing No.18 of 1987 is produced on record and documents are produced to show that there was compromise between the parties and as per the compromise the proceeding No.18 of 1987 was withdrawn. The contents of the document show that the present petitioner had agreed to accept the Respondent No.1 back in matrimonial house and to avoid further

dispute he had given the land to respondent No.1 by way of maintenance. For the purpose of proceeding filed under section 125 Cr.P.C. this evidence is sufficient to prove that there was marriage between petitioner and Respondent No.1. The legality of marriage need not be considered strictly in such a proceeding. In view of this circumstance, this Court holds that it is not possible to interfere in the decision given by the Sessions Court.

6. In the result, writ petition stands dismissed.

[T. V. NALAWADE, J.]

Dated:02/07/2015.
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