

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

Criminal Writ Petition No.288 of 2003

Shankar s/o Honaji Dhule,
Age 75 years,
Occupation Retired Gangman,
R/o Near Jijamatanagar,
Ambedkar Nagar, Hingoli,
Taluka and District Hingoli.

.. Petitioner.

Versus

Lahanubai w/o Shankar Dhule,
Age 35 years,
Occupation : Household,
R/o Hingoli,
New at Kalamnuri Naik Budhwada,
Taluka Kalamnuri,
District Hingoli.

.. Respondent.

Shri. Pawankumar S. Agrawal, Advocate, for petitioner.

Shri. S.R. Bagul, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 19th JUNE 2015

JUDGMENT:

1) The petition is filed to challenge the judgment and order of Criminal Misc. Application No.125/2001 which was pending in the Court of the learned Judicial Magistrate, First Class Kalamnuri, District Hingoli and

also the judgment and order of Criminal Revision No.1/2003 which was pending before the learned Additional Sessions Judge Hingoli. The original proceeding was filed for maintenance under section 125 of the Code of Criminal Procedure by present respondent. Maintenance at the rate of Rs.300/- per month was granted by the learned Judicial Magistrate. Both the sides are heard.

2) The decision is challenged mainly on the ground that the present respondent was already married, she has issues from the husband and so it was not possible for her to marry with the present petitioner. It was also submitted that there is no convincing evidence on the so called marriage of respondent with the petitioner.

3) This Court has carefully gone through the evidence given by both the sides before the learned Judicial Magistrate. Respondent has examined herself to give evidence of marriage. She has examined the priest and other witnesses also who had attended the marriage. One of her witnesses Shivaji Paikrao is close relative of

present petitioner and the suggestions given in cross examination to the present respondent by learned counsel for the present petitioner shows that it is suggested that daughter of Shivaji Paikrao is given in marriage to a son of present petitioner. This suggestion is admitted by the respondent. It is her case that as present petitioner had lost his wife, he had reached age of 65 years, he wanted support of somebody and so he decided to marry. It is her case that after solemnization of the marriage there was cohabitation for 4 to 5 months and thereafter she was driven out of her matrimonial house by the petitioner. There can be dispute only in respect of factum of marriage as the husband has not contended in the say that present respondent was already married and so she could not have married with him.

4) First time in the cross-examination it was suggested to the respondent that she had married with another person. She admitted this position but she has contended that she had taken divorce from said husband and a document in that regard was executed. The witnesses have given evidence on the divorce. It appears

that xerox copy of that document is produced on the record but that document is not duly proved. In any case it is not specifically contended by the husband that his marriage with present respondent was not possible due to marriage of the respondent with other person in the past.

5) Learned counsel for the petitioner placed reliance on a case reported as **1998 Mh.L.J. 335 (Yamunabai v. Ananatrao)**. In this case the Apex Court has observed that marriage of a Hindu woman with Hindu male having living spouse is nullity in the eye of law and so woman is not entitled to claim maintenance under section 125. The facts of the reported case were altogether different. In the present case the present petitioner married with respondent after death of his wife and there are the aforesaid circumstances.

6) Learned counsel for the respondent has produced some record that after the marriage the respondent opened a bank account in a nationalized bank by giving her name a Gangabai Shankar Dhule as wife of the present petitioner. She has produced photograph

showing that she was standing by the side of the petitioner as his wife. Cross examination of the present petitioner shows that he has given evasive answers with regard to this suggestion when the pass book was confronted to him and it was suggested that due to identification given by him the account was opened in the name of the present respondent. Though the record is not duly proved and the photographer is not examined, this circumstance cannot be ignored altogether in view of the fact that pass-book issued by the nationalized bank bears such name. The witness examined by the present petitioner has given evidence that present petitioner was required to cook himself though present petitioner has major issues. The evidence of the witness shows that present petitioner is not living with his sons and they have already married and they are living at different places. The witness of the petitioner has given evidence that he had not seen present respondent in the house of the present petitioner as his wife. The evidence shows that the petitioner was living alone though he has issues from the first wife and they married. This circumstance supports the case of the petitioner. There was virtually

no reason for Shivaji examined by the respondent to give evidence against his close relative, present petitioner.

7) In the case reported as **AIR 1999 SC 3348 (Dwarika Prasad Satpathy v. Bidyut Prava Dixit)** the Apex Court has laid down that for proving factum of marriage for the purpose of provision of section 125 of the Criminal Procedure Code strict proof of marriage is not necessary. In the present case there is evidence of the wife, the priest and the witnesses who attended the marriage. In addition, there is record of aforesaid nature. For the purpose of proceeding under section 125 of the Cr.P.C. such evidence and the record are sufficient to prove the factum of marriage. Thus, learned Judicial Magistrate and the learned Additional Sessions Judge have not committed any error in granting the relief of maintenance.

8) In the result, the petition stands dismissed. Rule is discharged with no order as to cost.

Sd/-
(T.V. NALAWADE, J.)

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