

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

CRIMINAL WRIT PETITION NO.: 313 OF 2003

Mathurabai W/o baburao Bhosale,
Age: 40 years, Occ: Nil,
R/o Kapuswadgaon, Tq. Vaijapur,
Dist. Aurangabad.

... **PETITIONER**
[ORIG. PETITIONER]

VERSUS

1. Baburao S/o Eknath Bhosale,
Age: 45 years, Occ: Agri.,
R/o Jambargaon, Tq. Vaijapur,
District: Aurangabad.

[ORI.RESPONDENT]

2. The State of Maharashtra.
(Copy to be served on
Public Prosecutor, High Court
of Bombay Bench at Aurangabad). ...

RESPONDENTS

Mr. R. L. Kute, Advocate for the Petitioner.
Mr. A. S. Shelke, Advocate for Respondent No.1.
Mr. P. N. Mule, A.P.P. for Respondent No.2.

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CORAM:-
DATED:-

T. V. NALAWADE, J.
25th JUNE, 2015.

JUDGMENT

1. The petition is filed for relief of quashing the decision
given by Family Court, Aurangabd in Petition No.E-614 of

2002. The Family Court has dismissed the petition by holding that the present Petitioner has failed to prove her relationship with the present Respondent as wife. Both the sides are heard.

2. It is the case of the Petitioner in the proceeding filed under section 125 Criminal Procedure Code that her marriage with the present Respondent took place about 30 years prior to date of the proceeding at Kapuswadgaon as per Hindu rites and customs. It is her case that there was cohabitation for around 20 years and during that period there was ill-treatment to her. It is her case the husband used to give her beating by saying that he does not like her. It is her case that he wanted to marry second wife. It is her case that as she could not conceive for about 5 years, after the marriage, severe ill-treatment was given to her. It is her case that about 15 years prior to filing of the proceeding she was severely beaten and driven out of matrimonial house. Since then she is living with her brother and it is her case that her brother is maintaining her.

3. It is the case of the wife that the husband had kept one mistress and the keep was living in his house. It is her

case that the husband has issues from this keep and he recently married with the keep, about 2 years prior to the date of the proceeding.

4. It is the case of the wife that she has no source of income and she is unable to maintain herself. It is the case of the wife that the husband owns 10 Acres of agricultural land which is irrigated and his annual income is more than Rs.5 Lakh. She had claimed Rs.1,500/- per month in the proceeding filed in the year 2002.

5. The present Respondent contested the matter by filing say and examining witnesses. He has contended that the entire application is false and the present petitioner is not his wife. It is his case that his brother has instigated the present petitioner to file false proceeding as his brother has some dispute of civil nature in respect of the landed property. It is his case that he had not even seen the present petitioner at any time.

6. It is the case of the present Respondent that he married with Sakhubai about 40 years prior to the date of proceeding at Rotegaon and from Sakhubai he has children who are also married and who are having issues. It is his case that he is aged about 70 years and he is dependent

on his issues. He has prayed for dismissal of the proceeding.

7. Before the Family Court, present petitioner examined herself and she gave evidence as per aforesaid contentions made in the application filed under section 125 Cr.P.C. In the examination in chief she deposed that the marriage took place about 30 years back and there was cohabitation of around 20 years. She again stated that she was living separate from the present Respondent for about 20 years. The other evidence is of refusal and neglect. Sukhadeo, brother of present Respondent, has given evidence that the marriage of Mathurabai took place with present Respondent about 35 years back at Kapuswadgaon. He has given evidence that there was cohabitation for about 6 years and after that also applicant used to come to the house of his mother. He has produced copy of voters list on the record to show that in the voters list Mathurabai is shown as the wife of present Respondent.

8. On the other hand, present Respondent Baburao has given evidence that he does not know Mathurabai and he never married with Mathurabai. He has given evidence that Sakhubai is his wife and he has 1 son and 4 daughters

from Sakhubai. He deposed that his son and daughters are married and they have also children. He has given evidence that on the instigation of his brother, Mathurabai has filed false proceeding against him. He has given evidence that there was partition between him and his brother but Sukhadeo created the dispute and to pressurise him, Sukhadeo has arranged to file such proceeding. The Respondent has examined Tanabai, who is sister of Respondent and she has given evidence that Respondent married Sakhuabi about 40 years prior to the date of deposition. She has given evidence that at the time of marriage of Respondent the age of Sukhadev was at the most 20 years. She has given evidence that the Petitioner is no way related with her brother. The Respondent has examined Sakhubai, his wife and she has given evidence that she married with Respondent about 40 years back when she was child. She has given evidence that she had never seen Mathurabai and the proceeding is false.

9. Present Petitioner has admitted that Sakhubai has been cohabiting with present Respondent for many years and she has issues from present Respondent. In the cross

examination she has given vital admission that marriage of Sakhubai with present Respondent took place about 40 years back. This evidence was given in the year 2003. She is trying to say that she married with the Respondent about 30 years back. Her witness Sukhadeo has tried to say that her marriage took place with the Respondent about 35 years back and there was cohabitation of 6 years. Petitioner has tried to say that there was cohabitation for about 20 years. It is not the case of Mathurabai that when she cohabited with Respondent, Sakhuabi was also there. In view of these admitted facts, it is not probable that Mathurabai had married with present Respondent and after that Respondent came in contact with Sakhubai. Only on the basis of age given by Mathurabai and Sakhubai no inference can be drawn as both of them are illiterate.

10. One more circumstance was argued by the learned counsel for the Petitioner and that is about extract of voters list. Surprisingly it is produced by Sukhadeo. Extract of voters list for the year 1980 is produced and it shows that in the house of Baburao Eknath there was one lady by name Mathurabai Baburao, aged about 29 years. Sukhadev was also living with Baburao and there was the

mother of Baburao, Shewantabai in this house. There were 2 ladies like Tarabai Sukhadev and Shailabai Sukhadev in this house but the name of Sakhubai is not shown in this list. The Family Court has refused to read this document in evidence by observing that it is not properly proved. Even if it is read in evidence, as it is a copy of public record, this document cannot help the petitioner to prove that there was marriage between her and Respondent. In view of the aforesaid admission it can be said that at the relevant time Sakhuabi was cohabiting with present Respondent.

11. When the fact of marriage itself was denied it was necessary for the present Petitioner to show that marriage had taken place at a particular place and some persons had attended the marriage. There ought to have been at least evidence on cohabitation of convincing nature. No such evidence is given.

12. Copy of voters list for the 2002-03 is produced and it shows that in the house of present Respondent his wife Sakhubai was living and she had given her age as 47 years.

13. Considering the scope of the present proceeding this Court holds that there is no possibility of interference in the

decision given by the Family Court. The factum of marriage is not proved and there are admissions of aforesaid nature.

14. In the result, petition stands dismissed. Rule discharged.

[T. V. NALAWADE, J.]

Dated:25/06/2015.
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