

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

CRIMINAL WRIT PETITION NO. 1437 OF 2014

Shirish S/o Vasant Biradar

Age : 49 Yrs., Occ.: Service,

R/o : Jawalga, Tq. Devani,

Dist. : Latur.

..... PETITIONER/

[ORI. RESP. NO. 1]

V E R S U S

1. Vasant S/o Ranba Biradar

Age : 70 Yrs., Occ. Agril.,

R/o : Jawalga, Tq. Devani,

Dist.: Latur.

2. Sow. Padminibai W/o

Vasant Biradar, Age : 70 Yrs.,

Occ. Household,

R/o : Jawalga, Tq. Devani,

Dist.: Latur.

3. Balaji S/o Vasant Biradar

Age : 37 Yrs., Occ. Agril.,

R/o : Jawalga, Tq. Devani,

Dist.: Latur.

4. Ramesh S/o Vasant Biradar

Age : 34 Yrs., Occ. Agril.,

R/o : Jawalga, Tq. Devani,

Dist.: Latur.

..... RESPONDENTS/

[ORI. APPLICANAT NOS. 1 & 2 AND

RESP. NOS. 2 & 3.]

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Mr. N.B.Jadhav, Advocate for the Petitioner.

Mr. M.G.Biradar, Advocate for the Respondents.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 15th JANUARY, 2015

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ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. By consent of the learned counsel for the petitioner and the learned counsel for the respondents, the Writ Petition is taken up for final hearing.

2. Shirish S/o Vasant Biradar/petitioner is the original non applicant in Misc. Application No. 25/2013 pending in the Court of the Judicial Magistrate First Class, Devani, Dist. Latur which is filed by the present respondent No. 1 Vasant S/o Ranba Biradar.

3. The respondent/original applicant is father of the petitioner. He filed a proceeding along with his wife Sow. Padminibai for maintenance u/s 125 of the Code of Criminal

Procedure. The matter proceeded before the Magistrate. When the case was fixed for the evidence of the original non applicant/present petitioner, for one reason or the other, he did not remain present before the Court below. Therefore, the order was passed by the learned Magistrate on 10/11/2014 below Exh. 1, thereby the matter was proceeded further without the evidence of the present petitioner/non applicant.

4. The Application (Exh. 28) was filed by the petitioner on 26/11/2014, by which a request was made by the petitioner before the learned Magistrate that opportunity to lead evidence may be granted to him. The said application is rejected by the learned Magistrate on 26/11/2014. Against the said order, the present Writ Petition is filed.

5. During the pendency of the present Writ Petition, the petitioner was directed to deposit an amount of ₹ 25,000/- [Rupees Twenty Five Thousand only] with this Court and in compliance of the said order, the petitioner has deposited an amount of ₹ 25,000/- [Rupees Twenty Five

Thousand only] with this Court.

6. True it is, it was the duty of the non applicant to appear before the Court when the matter was fixed for his evidence. This Court does not want to enter into the merit and de-merit in respect of the cause, as to why he was unable to present before the Magistrate. However, it is clear that the opportunity to put his case is permanently denied by the learned Magistrate by passing the order that the case should proceed without the evidence on the part of the non applicant/present petitioner. The principles of natural justice require that full opportunity should be granted to the party. On the touch stone of the principles of natural justice, the order passed by the learned Magistrate can not stand to the scrutiny of law. Consequently, the order dated 10/11/2014 passed below Exh. 1 and the order dated 26/11/2014 passed below Exh. 28 are hereby quashed and set aside. The petitioner shall be entitled to lead his evidence in the proceedings. It is made clear that the petitioner shall not unnecessarily prolong the matter. The petitioner shall not remain absent from the Court on the date which will be fixed by the learned Magistrate for adducing his

evidence. The parties are directed to appear before the learned Magistrate on 16/02/2015. On that day, the learned Magistrate shall fix the date for leading the evidence on the part of the petitioner/original non applicant.

7. The amount of ₹ 25,000/- [Rupees Twenty Five Thousand only] which is deposited by the present petitioner with this Court, in view of the order passed by this Court on 03/12/2014, shall be treated as interim maintenance for the respondents/original complainants. The original complainants/present respondents are entitled to withdraw ₹ 25,000/- [Rupees Twenty Five Thousand only] deposited by the petitioner. Needless to mention, the said amount will be adjusted finally after the decision of the proceedings of maintenance filed by the respondents.

8. With the above observations, Rule is made absolute. No costs.

[V.M.DESHPANDE, J.]

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