

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 7060 OF 2014

Sayas s/o. Devidas Kendre **....Applicant**

Versus

Vishnu s/o. Sayas Kendre & Anr. **....Respondents.**

Mr. S.V. Gundre h/f. Mr. V.D. Gunale, Advocate for applicant.

Mr. J.M. Murkute, Advocate for respondent Nos. 1 and 2.

CORAM : T.V. NALAWADE, J.

DATED : 24th June, 2015.

ORDER :

1. Application is filed to challenge the order made by the learned J.M.F.C. in M.A. No. 35/2014 on Exh. 25. The learned J.M.F.C., Ahmedpur, District Latur has refused to issue witness summons to some witnesses in a proceeding filed under section 125 of Cr.P.C. by the minor issues of the present applicant.

2. The submissions made by the learned counsel for the applicant/father and the say show that the father wants to prove that the mother of the minors is living in adultery. He wants to examine the witness to prove such defence. Such defence is not available as against the issues. In the say, the father has contended that he wants to take issues to his house, but the

mother of the issues is not ready to send them. In that case, proper proceeding can be filed by the father. But, till he gets custody of the minors, the minors are in the custody of the mother, who is also natural guardian and so, such defences cannot be considered and the witness summons cannot be issued. This point was not at all relevant in the proceeding and the Magistrate has rightly refused to issue witness summons. No merits are found in the proceeding. The proceeding is dismissed.

[T.V. NALAWADE, J.]

ssc/