

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1506 OF 2001

1. Sou. Shantabai Karbhari Korde,	]	
2. Ku. Vishvanath Karbhari Korde.	]	... Petitioners

Versus

1. Karbhari Gunaji Korde,	]	
2. State of Maharashtra.	]	... Respondents

None present.

CORAM :- M. S. SONAK, J.
DATE :- DECEMBER 02, 2015

P. C. :-

1. Neither the petitioner no.1 nor her Advocate are present. Similarly neither the respondent no.1 nor his Advocate are present. However, considering that the petition is of the year 2001, it would be appropriate if the same is disposed of on merits rather than dismissed for default.

2. The challenge in this petition is to the Judgment and Order dated 13/08/2001 made by the Additional Sessions Judge ('ASJ'), Nashik, in Criminal Revision Application No.284 of 2000 whereby the learned ASJ has set aside the Judgment and Order dated 15/07/2000 made by the Judicial Magistrate First Class ('JMFC'), Igatpuri, in Criminal Miscellaneous Application No.247 of 1998 to the

extent the said Judgment and order had granted maintenance of Rs.600/- per month in favour of the petitioner no.1. The maintenance of Rs.300/- per month in favour of the petitioner no.2 i.e minor son, has however confirmed by the learned ASJ, Nashik.

3. Upon perusal of the material on record, the impugned Judgment and Order dated 13/08/2001, to the extent it denied maintenance to the petitioner no.1, is liable to be interfered with. In this case, there is material on record that the petitioner no.1 and the respondent no.1 were married to each other. There is on record the birth certificate pertaining to the petitioner no.2 which establishes that the petitioner no.1 and the respondent no.1 have given birth to the petitioner no.2. There material on record which establishes that the petitioner no.1 is an 'Adivasi' and therefore, the customs normally applicable to 'Adivasis' would apply in the case of the petitioner. On basis of respondent no.1's contention that he was already married and therefore, the respondent no.1's second marriage with the petitioner no.1 is null and void, the learned ASJ has denied maintenance to the petitioner no.1. Such an approach runs counter to the principle that proceedings under Section 125 of Code of Criminal Procedure, 1973 (Cr.P.C.) are summary in nature and the object thereof is to provide relief to the destitute wife who is unable to maintain herself. Further, the learned ASJ failed to appreciate that the scope of revisional jurisdiction does not extend to re-assessing the material on record, as if appellate powers were being exercised.

4. In the present case, there was no clear material with regard to the so called 'first marriage'. There is material on record that the petitioner no.1 is an '*Adivasi*'. If so, necessary credence was required to be given to the position that such '*Adivasis*' have their own customs in matters such as marriage etc. The factum of marriage cannot be tested on the touchstone of strict proof. Besides, provisions under Section 125 of Cr.P.C. are summary in nature. Strict proof with regard to rituals at the stage of marriage are really not required. It is sufficient if the wife satisfies the Court that she has lived as husband and wife in pursuance of a marriage performed according to the customs applicable. In this case, the material on record establishes that parties have lived as husband and wife from which wedlock the petitioner no.2 was born. Considering the summary nature of proceedings under Section 125 of Cr.P.C., the learned ASJ exceeded the bounds of revisional jurisdiction. Accordingly, the impugned Judgment and Order dated 13/08/2001, to the extent it denies the petitioner no.1 maintenance, is set aside. The Judgment and Order dated 15/07/2000 made by the learned JMFC is restored.

5. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)