

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

CRIMINAL WRIT PETITION NO. 237 OF 2006

Kisan s/o Baburao Mahabole,
Age : 59 years, Occupation : Agri and Service,
R/o Horti, Taluka Tuljapur,
District Osmanabad.

...PETITIONER

-VERSUS-

Ushabai @ Indubai w/o Kishan Mahabole,
Age : 48 years, Occupation : Household,
R/o Horti, Taluka Tuljapur,
District Osmanabad.
At present C/o Tulshiram Ganpati Devkaran,
At Post Aalmala, Taluka Ausa,
District Latur.

...RESPONDENT

...
Advocate for Petitioner : Shri D G Nagode.
None for the Respondent.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th June, 2016

Oral Judgment:

1 Though this petition was admitted by this Court on
11.04.2007, interim relief was refused.

2 The Petitioner is aggrieved by the order dated 23.06.2005
delivered by the learned Judicial Magistrate First Class, Ausa vide which

the maintenance of an amount of Rs.1000/- was granted to the Respondent. The Petitioner is also aggrieved by the judgment and order dated 09.01.2006 delivered by the learned Adhoc Additional Sessions Judge, Latur by which Criminal Revision No.72/2005 filed by the Petitioner was dismissed.

3 Shri Nagode, learned Advocate for the Petitioner, has strenuously criticized the impugned judgments. The contention is that the Trial Court has casually allowed the application under Section 125 of the Code of Criminal Procedure by which the Respondent had sought maintenance from the Petitioner. The earning capacity of the Petitioner was not considered. Several factual details though are noted in the impugned order, have not been considered.

4 He further submitted that the specific contention of the Petitioner that one Girjabai was his only wedded wife and he had not performed any marriage with the Respondent on 09.05.1977, was ignored by the Trial Court. He further submits that the Revisional Court failed to note the perversity in the conclusions of the Trial Court and has mechanically dismissed the revision petition.

5 He adds that on the one hand, the factum of marriage was

denied by the Petitioner and on the other hand, his earning capacity and his advanced age was not considered by both the lower Courts. He, therefore, prays that both the impugned orders deserve to be quashed and set aside.

6 I have considered the submissions of the learned Advocate for the Petitioner.

7 It is trite law that interference by this Court in the findings on facts arrived at by the Trial Court is not permissible only because a second view is possible (Read *Shalini Shyam Shetty vs. Rajendra Shankar Patil*, **2010(8) SCC 329** and *Radhey Shyam and another vs. Chhabi Nath and others*, **(2015) 5 SCC 423 : 2015 (3) SCALE 88**).

8 The Trial Court considered the contention of the Petitioner that he was allegedly married to Girjabai. It was concluded on the basis of evidence that the Respondent established her marriage with the Petitioner on 09.05.1977. There was hardly any evidence before the Trial Court with regard to the alleged marriage of the Petitioner with Girjabai. The father of Girjabai stated in his oral evidence that he had no knowledge, whether, the Petitioner had married the Respondent prior to his alleged marriage with Girjabai. The Trial Court, therefore, concluded on the basis of

evidence that the Petitioner had failed to substantiate his marriage with Girjabai.

9 Insofar as the earning capacity of the Petitioner is concerned, the Trial Court had noted that he was working as Secretary of Vividh Karyakari Seva Sahakari Society and was earning Rs.10,000/- per month. He owned and possessed the land admeasuring about 6 to 7 acres at villages Chikundra and Verti, Taluka Tuljapur. It was noted that the Respondent had no source of income and was also suffering from illness.

10 Considering the above, I do not find that the impugned judgments of the Courts below could be termed as being perverse or erroneous. This Criminal Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.