

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

CRIMINAL WRIT PETITION NO. 208 OF 2005

1 Ushabai w/o Subhash Wanve,
Age : 37 years, Occupation : Houosehold,
R/o Rohatwadi, now at
Kotan, Taluka Patoda,
District Beed.

2 Vanita d/o Subhash Wanve,
Age : 14 years, minor u/g of
her mother Ushabai Petitioner No.1.

3 Nitin s/o Subhash Wanve,
Age : 12 years, minor u/g of
his mother Petitioner No.1.

...PETITIONERS

-VERSUS-

1 Subhash s/o Shankar Wanve,
Age : 42 years, Occupation : Agriculture,
Ex-Military-man,
R/o Rohatwadi, Taluka Patoda,
District Beed.

...RESPONDENT

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Advocate for Petitioners : Shri S.S.Bora.

Advocate for Respondent : Shri Fulchand R Tandale.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th June, 2016

Oral Judgment:

1 I have heard Shri Bora and Shri Tandale, learned Advocates
for the respective sides at length.

2 Considering the issue involved, I am not required to advert to
their entire submissions.

3 It is not in dispute that the Respondent/ husband secured
divorce against Petitioner No.1 on the ground of adultery. The appeal filed
belatedly suffered rejection on account of the application for condonation
of delay having been rejected by the Appeal Court. Challenge of the
Petitioner to the rejection of the application for condonation of delay was
not entertained by this Court as well as by the Division Bench of this Court
in Letters Patent Appeal. It is, therefore, not in dispute that the decree for
divorce on the ground of adultery has attained finality.

4 Section 125(4) of the Code of Criminal Procedure dis-entitles
the wife from seeking allowance for the maintenance if the decree for
divorce is based on a finding of adultery. The wife would, therefore, not be
entitled to receive any amount for the maintenance or interim
maintenance or expenses of the proceedings as the case may be, from her
husband if she is living in adultery.

5 It is jointly submitted that the matter in between the
Petitioners and the Respondent to the extent of payment of maintenance
in favour of Petitioner Nos.2 and 3 has been settled between the parties.

6 In the light of the above and considering the law applicable, I
do not find that the impugned order dated 28.03.2005 delivered by the
learned Revisional Court refusing maintenance to the Petitioner No.1
could be termed as being perverse or erroneous.

7 This Criminal Writ Petition being devoid of merit is, therefore,
dismissed. Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)