

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

Criminal Writ Petition No. 340 of 2004

District : Ahmednagar

Bashir s/o. Husainbhai Shaikh,
Age : 38 years,
Occupation : Laburer,
R/o. Village Kuldharan,
Taluka Karjat,
District Ahmednagar.

.. Petitioner
(Original
Non-applicant).

versus

1. Smt. Nayada w/o. Bashir Shaikh,
Age : 30 years,
Occupation : Household &
Business (Hoteling),
R/o. Village Durgaon,
Taluka Karjat,
District Ahmednagar.

2. Amir s/o. Bashir Shaikh,
Age : 11 years (Minor),
under guardian of his mother
- Smt. Nayada w/o. Bashir
Shaikh / Respondent No.1.

.. Respondents
(Nos.1 & 2 -
Original applicants)

3. The State of Maharashtra.

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*Mr. Rajendra S. Deshmukh, Advocate, for the
petitioner.*

Mr. R.K. Temkar, Advocate, for respondent nos.1 & 2.

*Mr. P.N. Kutti, Addl. Public Prosecutor, for
respondent no.3.*

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CORAM : Z.A. HAQ, J.

DATE : 18TH NOVEMBER 2016

ORAL JUDGMENT:

Heard Mr. R.S. Deshmukh, learned Advocate for the petitioner, Mr. R.K. Temkar, learned Advocate for respondent nos.1 & 2, and Mr. P.N. Kutti, learned Addl. Public Prosecutor for respondent no.3.

2. The petitioner has challenged the order dated 15th April 2004, passed by the Ist Ad hoc Addl. Sessions Judge, Ahmednagar, in Criminal Revision No. 338/2003, by which the order passed by the Judicial Magistrate (F.C.), Karjat, on 05th November 2003, in Criminal Misc. Application No. 171/2000, is maintained and the petitioner is directed to pay the amount of maintenance to the respondent nos.1 and 2.

3. The submission on behalf of the petitioner is that the respondent no.1 has failed to bring on record sufficient evidence to establish that marriage between petitioner and respondent no.1 had taken place and that respondent no.1 is legally wedded wife of the petitioner. It is submitted that the subordinate Courts have committed an error in relying on photo-copy of certificate issued by Kazi, to conclude that respondent no.1 is legally wedded wife of the petitioner.

4. The subordinate Courts have recorded finding that respondent no.1 is legally wedded wife of the petitioner, not only relying on photo-copy of certificate issued by Kazi, but have also considered the evidence of Kazi Mukhtar and evidence of Mahboob Shaikh, who has deposed that he was present at the time of marriage between petitioner and respondent no.1. Apart from this, the subordinate Courts have relied on the extract of voters' list which records that the respondent no.1 is wife of the petitioner. The learned Advocate for the petitioner has argued that the voters' list (Exhibit 72) is prepared during the pendency of proceedings before Magistrate and therefore it could not have been relied upon. The submission cannot be accepted. The petitioner has not pointed out anything from the record which shows that the petitioner objected to the description of respondent no.1 as wife of the petitioner in the voters' list. The findings of facts concurrently recorded by the subordinate Courts are based on proper appreciation of evidence on record.

5. The alternate submission on behalf of the petitioner is that the amount of maintenance determined by the Sessions Court is without any basis. This submission also cannot be accepted. The learned Magistrate had directed the petitioner to pay Rs. 1,000/- per month to the respondent no.1, and Rs. 750/- per month to the respondent no.2 towards

maintenance and this is modified by the Sessions Court and the petitioner is directed to pay Rs.500/- per month to the respondent no.1 and Rs.400/- per month to the respondent no.2 towards maintenance. The learned Addl. Sessions Judge has properly applied his mind and determined the amount of maintenance.

6. I see no reason to interfere with the impugned order. However, it is clarified that the respondent no.2 would be entitled for the amount of maintenance till he attained the age of 18 years.

With the above modification / clarification, the Writ Petition is disposed of. Rule is discharged. In the circumstances, parties shall bear their own costs.

(Z.A. HAQ)
JUDGE

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