

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

CRIM. WRIT PETITION NO. 488 OF 2004

1. Sou. Rekha w/o Balaji Dhumal
Age : 25 Yrs., Occ. : Household,
R/o : Shedolwadi, Tq. Nilanga,
at present c/o Ram s/o Balaji
Londhe, R/o : Anandwadi
(Shivani – Kotal), Tq. Nilanga.

2. Santosh s/o Balaji Dhumal
Age : 3 Yrs., U/g of his mother -
Applicant No. 1, R/o : Shedolwadi,
Tq. Nilanga, at present
Anandwadi.

... PETITIONERS

VERSUS

Balaji s/o Jyotiram Dhumal
Age : 36 Yrs., Occ. : Agril.,
R/o : Shedolwadi, Tq. Nilanga,
Dist. Latur.

..... RESPONDENT

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Mr. R.B.Deshmukh, Advocate for Petitioners.
None for the Respondent.

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CORAM : Z.A.HAQ, J.

DATE OF JUDGMENT : 23rd NOVEMBER,2016

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ORAL JUDGMENT :

01. Heard Mr. R.B.Deshmukh, learned Advocate for the Petitioners. None appears for the Respondent.

02. The petitioners filed application u/s 125 of the Code of Criminal Procedure contending that petitioner No. 1 is legally wedded wife of the respondent and petitioner No. 2 is the son of the respondent and they are neglected by the respondent and, therefore, the respondent be directed to pay maintenance to the petitioners. The respondent opposed the claim of the petitioners and denied relationship as pleaded by the petitioners. The learned Magistrate by the Judgment passed on 31/05/2004 concluded that petitioner No. 1 failed to establish that she was legally wedded wife of the respondent and that petitioner No. 2 was son of the

respondent and the application filed by the petitioners was dismissed. Being aggrieved by the Judgment passed by the Magistrate, the petitioners filed Revision Application. In the Revision before the Sessions Court, the petitioners filed Birth Certificate to support the claim that petitioner No. 2 is the son of the respondent. The learned Sessions Judge overlooked this document and dismissed the Revision Application recording that the petitioners have not placed on record any documentary evidence to support their contentions. The petitioners being aggrieved in the matter have filed this petition.

03. The learned Advocate for the petitioners has submitted that petitioner No. 1 is a rustic woman and for want of proper guidance the documentary evidence could not be produced before the Magistrate, however, the Birth Certificate issued by the Chief Officer, Nagar Parishad, Nilanga on 03/06/2004 was produced before the Sessions Court, which shows that a male child was born to petitioner No. 1 and in this document name of the respondent is

recorded as father of the male child. Though this document was filed before the Sessions Court, as is clear from para No. 6 of the Judgment passed by the Sessions Court, the Sessions Court overlooked this document and dismissed the Revision Application recording that the petitioners have not placed any documentary evidence on record to support their contentions. It is submitted that the Judgment passed by the Sessions Court suffers from perversity and non consideration of relevant document and, therefore, it is liable to be set aside. It is prayed that the impugned Judgment be set aside and the application filed by the petitioners before the Magistrate praying that the respondent be directed to pay amount of maintenance be allowed. Alternatively, it is submitted that the matter be remanded to the Magistrate for fresh trial.

04. The contents of para No. 6 of the Judgment passed by the Sessions Court show that the Birth Certificate on which the petitioners are relying to support the claim that petitioner No. 2 is the son of

the respondent, is placed on the record of the Revision along with list Exh. 4. The contents of para No. 6 of the Judgment passed by the Sessions Court show that the Advocate, who represented the petitioners before the Sessions Court, relied on the birth certificate and argued that the birth certificate shows that petitioner No. 2 is son of the respondent. Surprisingly, learned Additional Sessions Judge has not considered this document. In the facts of the present case, in my view, interests of justice would be sub-served by setting aside the impugned Judgments and remanding the matter to the Magistrate to enable the parties to prove their contentions. I am conscious that the course of remanding the matter should be adopted in exceptional cases. I find that in the present case the issue is not only about the entitlement of the petitioners to receive the amount of maintenance from the respondent, but is about the social status of the parties and about paternity of petitioner No. 2 and, therefore, it is necessary to give appropriate opportunity to the parties to prove their contentions.

Hence, the following order.

- (i) The impugned Judgment are set aside.
- (ii) The matter is remanded to the Court of the Judicial Magistrate First Class, Nilanga for fresh trial.
- (iii) The parties are permitted to amend pleadings, to file documents and to lead further evidence, if advised.
- (iv) The learned Magistrate shall dispose of the proceedings within six months from the date of this Judgment.
- (v) The petitioners undertake to appear before the Judicial Magistrate First Class, Nilanga [Court No. 1] on 13/01/2017 and abide by further orders in the matter.
- (vi) The learned Magistrate shall issue notice

to the present respondent.

- (vii) Rule is made absolute in the above terms.
- (viii) In the circumstances, the parties to bear their own costs.

[Z.A.HAQ, J.]