

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

CRIMINAL APPLICATION NO. 3712 OF 2015

Chimaji s/o Umaji Gaikwad,
Age: 40 years, Occ: Service,
R/o. Gautam Nagar, Parbhani,
Tq. & Dist. Parbhani.

...Applicant

versus

1. Arunabai w/o Chimaji Gaikwad,
Age: 35 years, Occ: Household,
2. Meena d/o Chimaji Gaikwad,
Age: 15 years, Occ: Education,
3. Vijay s/o Chimaji Gaikwad,
Age: 12 years, Occ: Education,
4. Sachin s/o Chimaji Gaikwad,
Age: 10 years, Occ: Education,

Respondent Nos. 2 to 4 are minors
under guardianship of their real
mother i.e. respondent No. 1
All R/o. of Wator Phata,
Tq. Partur, Dist. Jalna.

...Respondents

.....
Mr. R.D. Khadap, Advocate for applicant
Mr. V.A. Bagal, Advocate for respondent Nos. 1 to 4
.....

CORAM : N.W. SAMBRE, J.

DATE : 27th APRIL, 2016

ORAL ORDER :

Learned Judicial Magistrate, First Class, Partur, by an
order dated 05/04/2012, awarded monthly maintenance of Rs.1500/-
to respondent-wife, Rs.1200/- each to respondent Nos. 2 and 3 and

Rs.1000/- to respondent No. 4. The said order was confirmed in revision, which was preferred at the behest of the petitioner, by an order 06/04/2015 by Adhoc Assistant District Judge-4, Jalna.

2. While questioning the legality of the order, learned Counsel for the applicant-husband would urge that the respondent-wife has failed to establish the relationship, so also birth of the children. For establishing the same, he would rely upon the judgment of the Judicial Magistrate, First Class, Basmathnagar passed in Misc. Criminal Application No. 69 of 1991, whereby learned Magistrate has awarded maintenance under Section 125 of the Code of Criminal Procedure, by an order dated 22/03/1993 in favour of one Padminibai, Prameela and Jyoti. Based on the same, he would urge that since the applicant is already married to Padminibai, present respondent-Arunabai cannot be treated his legally wedded wife , as such, provisions of Section 125 of the Code are not attracted.

3. Though the present applicant has denied the relationship, the issue was framed by the Magistrate as regards lawful relationship between the applicant and respondent-Arunabai being husband and wife and answered the same in favour of respondent-wife. Apart from above, the said issue was already dwelt upon by learned Sessions Judge while dismissing the revision.

In a Say Exhibit-17, the above referred issue as regards his first marriage with Padmini was very much taken into account by both the Courts below. Both the Courts have concurrently held about existence of lawful relation of applicant and respondent-Arunabai.

4. In absence of any cogent evidence, this Court is not inclined to take other view in exercise of extraordinary jurisdiction vested in it. As such, present application fails and stands dismissed.

[N.W. SAMBRE, J.]