

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

CRIMINAL WRIT PETITION NO. 336 OF 2003

Vilas Sitaram Aute,
Age: 30 years, OCC: Barber,
R/o. Rasate Suregaon,
Tal. Yeola, Dist. Nashik.

...Petitioner

versus

1. Mangala Vilas Aute,
Age: 30 years, Occ: Household
and Labour, R/o. 80 Feet Road,
Shivaji Nagar, Dhule.

2. Sitabai Vilas Aute,
Age: 9 years, Minor,
Through her mother
respondent No.1.

3. State of Maharashtra.

...Respondents

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Mr. N. R. Dayama, Advocate h/f Mr. Mukul Kulkarni, Advocate for petitioner
Mr. P. B. Patil, Advocate for respondent Nos.1 & 2
Ms. R. P. Gour, A.P.P. for respondent No. 3

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CORAM : N.W. SAMBRE, J.

DATE : 4th APRIL, 2016

ORAL JUDGMENT :

This writ petition is by the petitioner-husband. The parties have entered into contract of marriage on 23/03/1992. It is claimed that on 25/11/1994 the petitioner and his wife Mangala entered into a settlement and registered a deed of divorce. The

petitioner claims that he has paid one time alimony in *lumpsum* i.e. Rs.3000/- for wife and Rs.5000/- for his daughter, total Rs.8000/-. According to him, in the above referred background, Criminal Misc. Application No. 178 of 1994 preferred by wife-Mangala for maintenance under Section 125 of the Code of Criminal Procedure was not tenable, still the Magistrate has proceeded to pass an order awarding maintenance of Rs.300/- per month each to present respondent Nos. 1 and 2 i.e. total Rs.600/- per month, by an order dated 24/12/2001, which was upheld in revision bearing Criminal Revision Application No. 22 of 2002 before learned Additional Sessions Judge, Dhule, by an order dated 03/05/2003.

2. By relying upon the judgment of this Court in the matter of ***Popat Kashinath Bodke vs. Kamalabai Popat Bodke and others*** reported in ***2003(2) Mh.L.J. 608***, learned Counsel for the petitioner would urge that the order of maintenance is not sustainable in view of the fact that the petitioner has taken recourse to the divorce by mutual consent by adhering customary system as is prevailing in *Nhavi* community, to which they belong.

3. He would then submit that the petitioner being barber by profession, is unable to maintain or pay the maintenance amount.

4. Learned Counsel for the respondents opposed the

application on the ground that the alleged divorce by mutual consent and acceptance of one time alimony is not recognized in the custom as are followed in the community, to which both the petitioner and respondents belong. He would submit that grown up daughter from second marriage is required to be maintained by the petitioner-husband and as such, the Court below rightly invoked provisions of Section 125(1) of Code of Criminal Procedure in favour of the respondents. Learned Counsel for the respondents prays for dismissal of the writ petition.

5. With the assistance, I have perused the findings recorded by learned Magistrate, so also the Revisional Court.

6. Learned Magistrate, after framing the points as regards maintainability of the application and financial capacity of the respondent to maintain herself, has ruled in favour of the respondents by observing that the remedy provided under Section 125(1) of the Code of Criminal Procedure is statutory remedy and cannot be taken away in view of divorce by mutual consent, which has hardly any sanctity in law or was not approved by the Court.

7. It is required to be noted that the revisional Court then re-examined the issue and has confirmed the order passed by learned Magistrate by dismissing the revision.

8. The order of payment of maintenance holds field since 24/12/2001, which was not stayed by this Court.

9. Looking to the expenses as are incurred on the date, the amount of maintenance as ordered Rs.300/- per month to each respondent Nos. 1 and 2, in my opinion, the judgment in the matter of ***Popat Kashinath Bodke*** (supra), will hardly be any assistance to the petitioner, as it is not established that the divorce by adopting customary practice is recognized in the community to which present parties are belonging to.

10. As such, no case for interference in extraordinary jurisdiction is made out. The writ petition, as such fails and stands dismissed.

Sd/-

[**N.W. SAMBRE, J.**]