

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

CRIMINAL REVISION APPLICATION NO. 276 OF 2003

1. Urmila @ Meenakshi w/o Rajkumar Nilawar,
Age: 25 years, Occ: Household,
R/o. Jamb (Bk), Tq. Mukhed,
Dist. Nanded.
 2. Yogita d/o Rajkumar Nilawar,
Age: 7 years, minor under
Guardianship of her real mother
Urmila @ Meenakshi w/o Rajkumar
Nilawar, Age: 25 years, Occ: Household,
R/o. Jamb (Bk), Tq. Mukhed,
Dist. Nanded.
- ...Applicants

versus

1. Rajkumar s/o Dhondiram Nilawar,
Age: 29 years, Occ: Service,
R/o. Nitur, Tq. Nilanga,
Dist. Latur.
 2. The State of Maharashtra.
- ...Respondents

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Mr. D.D. Sarvade Patil, Advocate holding for
Mr. S.S. Choudhari, Advocate for applicants
Mr. B.S. Kudale, Advocate for respondent No.1
Mr. R.V. Dasalkar, A.P.P. for respondent No. 2
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CORAM : N.W. SAMBRE, J.

DATE : 22nd APRIL, 2016

ORAL JUDGMENT :

Parties to the proceedings married on 27/05/1994 and out of the said wedlock, female issue was given birth, by name Yogita.

2. Regular Civil Suit No. 904 of 2000 came to be filed by applicants Urmila and Yogita seeking declaration and injunction for setting aside the registered divorce deed dated 03/03/1997 on the ground that the said registered divorce deed was got executed by playing fraud.

3. The above referred civil suit came to be dismissed on 03/08/2002 and it is informed that no appeal was preferred against the judgment and decree of dismissal of the said suit.

4. The applicant-wife initiated proceedings under Section 125 of the Code of Criminal Procedure seeking maintenance from the present respondent-husband vide Misc. Criminal Application No. 27 of 1997 seeking maintenance of Rs.500/- per month each, to present applicant Nos. 1 and 2, which was objected by the respondent-husband. Learned Magistrate, by an order dated 10/01/2001, has allowed the application and ordered that the maintenance of Rs.500/- per month be paid to the wife and Rs.300/- per month to the daughter, from the date of filing of the application.

5. In Criminal Revision No. 02 of 2001, the order of learned Magistrate granting maintenance was questioned, which revision

came to be allowed, by the judgment and order dated 09/05/2003. As such, present revision application under Section 397 of the Code of Criminal Procedure.

6. It is the contention of learned Counsel for the applicants that the divorce deed which was a registered instrument is not admissible in law. He would then submit that the divorce deed was registered by practicing fraud and by making misrepresentation to the applicants. He would then urge that the change in circumstances entitled the present applicants to claim maintenance, even if the alleged divorce deed is considered to have been executed. He then placed reliance upon the judgment of the Madras High Court in the matter of ***K. Pandian vs. A. Savithiri*** reported ***MADLJ 1998 1 760***. Based on the said judgment, he would submit that the provisions of Section 125 of the Code of Criminal Procedure are available to a woman in distress, the section confers right to claim maintenance for future.

7. Mr. Kudale, learned Counsel for the respondent-husband would invite attention of this Court to the judgment of dismissal passed by 3rd Joint Civil Judge, Junior Division, Latur in Regular Civil Suit No. 904 of 2000 at the behest of present applicants being plaintiffs against respondent, wherein declaration and injunction was

sought as regards registered divorce deed dated 03/03/1997. According to him, the plea was raised before the said Court that divorce deed is sham and bogus document and was not executed by playing fraud on the present applicant-wife, the said contentions were negated by learned Civil Court after appreciating the evidence. He would then submit that the learned revisional Court has gone into all facets of the matter and has noted that the divorce deed as was executed and registered and payment of money i.e. one time alimony was very much established.

8. Having bestowed my thoughts to the submissions made, it is required to be noted that once a plea as regards declaration of the alleged divorce deed to be sham and bogus document is turned down by the competent Civil Court after appreciating the pleadings and evidence of the parties and since the said verdict is not questioned by the present applicants before any higher Court, the same has attained finality. In view thereof, it is not permissible for the present applicants to canvass in the present proceedings that the registered divorce deed was sham and bogus document.

9. It is then required to be noted that under the divorce deed in question, an amount of Rs. 25,000/- was already paid to the present applicant-wife. It is then required to be noted that parties to

the proceedings have arrived at settlement in the application preferred under Section 125 of the Code of Criminal Procedure, pursuant to the deed of divorce, as was executed.

10. It is then required to be noted that learned Sessions Judge, having taken note of the two important aspects i.e. compromise recorded in Misc. Criminal Application No. 39 of 1997 before learned Judicial Magistrate, First Class, Nilanga and decree of dismissal of the suit preferred by the present applicant-wife, has proceeded to allow the revision. In my opinion, the revisional Court has not committed any error of jurisdiction or has not exceeded the jurisdiction, rather no case for interference on that count, in revisional jurisdiction before this Court, is made out. As such, Criminal Revision Application fails and stands dismissed. Rule is discharged.

Sd/-

[N.W. SAMBRE, J.]