

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

CRIMINAL WRIT PETITION NO. 945 OF 2014

Yusuf s/o Abdul Rasheed Shaikh,
Age: 38 years, Occ: Nil,
R/o. Shahapur, Tq. Tuljapur,
now at KGN Chawl, Room No.24,
Mumbra, Dist. Thane.

...Petitioner

versus

1. Apsara Ex-w/o Yusuf Shaikh,
Age: 33 years, Occ: Business,
R/o. Indra Nagar, Behind Balaghat
College, now c/o Nizamuddin Hyder
Hussain, Diwanshah Dargah,
Dudh Bawli Road, Room No.3,
Near Hanumant Mandir, Bhiwand,
Dist. Thane.
2. Aman s/o Yusuf Shaikh,
Age: 12 years,
3. Shipa d/o Yusuf Shaikh,
Age: 07 years,
4. Saba d/o Yusuf Shaikh,
Age: 05 years,

Respondent Nos. 2 to 4 minors
u/g of real mother i.e. respondent No.1
r/o. As above.

...Respondents

.....
Mr. M.B. W. Khan, Advocate for petitioner
Mr. K.K. Kulkarni,, Advocate for respondent Nos.1 to 4
.....

CORAM : N.W. SAMBRE, J.

DATE : 1st APRIL, 2016

ORAL ORDER :

The respondent filed an application under Section 125 of the Code of Criminal Procedure, to which Exhibit-7 Say was filed by the petitioner. After say was filed, the evidence of both the parties is concluded and the matter is fixed for final hearing. At this stage, application Exhibit-24 came to be filed by him and sought liberty to adduce additional evidence. Same came to be rejected by learned Magistrate by an order dated 16/07/2014, which is impugned in the present petition.

2. Heard Mr. Khan, learned Counsel for the petitioner. While trying to make out the case for grant of indulgence, would urge that the proceedings as are initiated under Section 125 of Code of Criminal Procedure are quasi-civil in nature and in view thereof, parameters as are required to be considered while dealing with the application under Order 6 Rule 17 of the Code of Civil Procedure are not required to be adhered strictly. He would submit that what is required to be noted by the Court is to give fair opportunity to the parties to bring their case before the Court. He would submit that by way of amendment, what is sought to be brought before the Court is, divorce that took place between the present petitioner and respondent. According to him, even if suppose, the amendment is not granted, still in quasi-civil proceedings, in absence of pleadings,

opportunity to lead evidence can be granted. So as to substantiate his contention, he has relied upon the judgment of this Court in the matter of ***Lalit s/o Chokhaji Meshram vs. Vandana w/o Lalit Meshram and others*** reported in ***2013 ALL MR (CRI) 2704***.

3. Learned Counsel for the respondent-wife would submit that the proceedings have reached at very advanced stage, rather at concluding stage. He would urge that recording of evidence of both the parties is over and it is at this stage, the application is moved. While drawing support from the judgment of this Court in the matter of ***Sau. Kavita Vinayakro Dhopte vs. Vinayakrao Ramchandra Dhopte*** reported in ***2015 ALL MR (Cri) 1370***, he would submit that learned Court below has rightly rejected the application.

4. Having bestowed my thoughts to the submissions made, it is required to be noted that original proceedings as are initiated by wife are under Section 125 of the Code of Criminal Procedure seeking maintenance. In the said proceedings, the evidence is already concluded and next stage is for final arguments. By way of application Exhibit-24, the petitioner-husband has come out with the case that there was a divorce before filing of the application under Section 125 of the Code of Criminal Procedure and seeks liberty to adduce the evidence in support thereof. Even presuming that such

application is allowed, still, in my opinion, the said contention of divorce will be of hardly any bearing over the outcome of the proceedings under Section 125 of Code of Criminal Procedure, as Section 125 of the Code of Criminal Procedure is a statutory remedy available to a party. Apart from above, in paragraph-4 of the judgment cited by Mr. Khan, learned Counsel for the petitioner i.e. in the matter of ***Lalit s/o Chokhaji Meshram*** (supra), it is required to be noted that the Court has shown indulgence as the proceedings were in the midst of recording of evidence and not at concluding stage. So far as reliance placed by learned Counsel for the respondent on the judgment of ***Sau. Kavita Vinayakro Dhopte*** (supra), in my opinion, governs the field, which is after taking into account the judgment of the Apex Court.

5. As such, no illegality could be noted in the order impugned passed below Exhibit-24. The writ petition fails and stands dismissed.

[N.W. SAMBRE, J.]