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

CRIMINAL WRIT PETITION NO.1167 OF 2014

Laxman Eknath Chandne,
Age: 58 years, Occ: Agri.,
R/o. Chandne Vasti, Bahirwadi,
Tq. & Dist. Beed. ..PETITIONER

VERSUS

Sakhubai (alleged) w/o Laxman
Chandne, R/o. Chandne Wasti,
Bahirwadi, Tq. & Dist. Beed. ..RESPONDENT

Mr Touseef Y. Sayyed, Advocate for petitioner;
Mr G.K. Naik Thigle, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 26th August, 2016

ORDER :

The respondent, who is claiming to be wife, initiated proceedings being Criminal Misc. Application No. 496 of 2008 in the Court of Judicial Magistrate, First Class (Court No.3) Beed, claiming maintenance of Rs.1500/- per month, under Section 125 of the Code of Criminal Procedure. The said claim is based on the following material facts:-

(2)

- (a) The marriage was performed some 35 years back,
- (b) out of the said marriage, son Chhabu was born,
- (c) in 2007, the suit is filed for partition and separate possession based on the said marriage.

2. The application came to be allowed on 6th April, 2013 directing the payment of maintenance Rs.1200/- per month, as present petitioner is working with the Beed Municipal Council and drawing salary of Rs.6000/- per month.

3. In support of such claim, the respondent – wife examined herself and has also examined witness Dharma, cousin brother of the petitioner, who supported her case.

4. The order of granting maintenance was subject matter of challenge in revision before learned Sessions Judge, Beed in Criminal Revision

(3)

Application No. 58 of 2013, which came to be dismissed on 19th September, 2014.

5. While questioning the sustainability of the order of grant of maintenance, Mr. Sayyed, learned Counsel for the petitioner would strenuously urge that once the factum of marriage is not proved, as the petitioner having denied the said relationship, burden was on the respondent to prove the same. Once the marriage was not proved, the Court below has committed an error of law in granting maintenance contrary to the scheme of Section 125 of the Code of Criminal Procedure. So as to substantiate his contention, he has relied upon the judgment of the Division Bench of this Court in the matter of **Ranjana Vinod Kejriwal vs. Vinod Bbulal Kejriwal** reported in **2009(6) Mh.L.J.20**), particularly paragraphs 16 and 16 thereof.

6. Mr. Thigle, learned Counsel for the respondent would support the order and submits that

(4)

in view of contrary findings recorded by both the Courts below, this Court in extraordinary jurisdiction, particularly under Article 227 of the Constitution of India, should be slow in interfering with the finding of facts recorded. He would then urge that the evidence of an independent witness i.e. cousin brother of the petitioner support the case of the respondent apart from the fact that specific statement was made that son Chhabu was born out of the said wedlock. According to him, maintenance as ordered in exercise of powers under Section 125 of Code of Criminal Procedure is with an object, to which the provision was enacted in statute and prayed for rejection of the petition.

7. Mr. Sayyed, learned Counsel for the petitioner, in my opinion, was right in contending that the factum of marriage ought to have been proved when there is specific denial by the petitioner qua existing of marital relationship between the petitioner and respondent. He has

(5)

rightly draw support from the judgment of this Court in the matter of **Ranjana Vinod Kejriwal** (supra), however, other facts so far as the case in hand is concerned, are altogether different pedestal than that of case of **Ranjana Vinod Kejriwal** (supra). In the present case, real cousin brother of petitioner has been examined by the respondent so as to prove the factum of marriage and the testimony of said independent witness coupled with that of respondent-wife's testimony, the Court has rightly drawn inference that there is marriage in between petitioner and respondent, which was formed to be basis for ordering payment of maintenance. There is one more aspect of which this Court must take judicial note of, the respondent wife has specifically come out with the case that out of wedlock, Chhabu was born.

8. The said statement, even if denied, is accepted as it is, presumption under Section 112 of the Evidence Act is against the petitioner and it is for the petitioner to rebut the same, which in

(6)

the trial Court, was at all not done. Apart from above, it is required to be noted that the object for enacting the provisions of Section 125 of the Code of Criminal Procedure pertains to social justice and to protect women and children. Appropriate support can be drawn from the judgment of the Apex Court in the matter of **Chaturbhuj vs. Sita Bai** reported in **A.I.R. 2008(2) SC 316**.

9. In view of above, in my opinion, no case for interference in extraordinary writ jurisdiction is made out. As such, the petition fails and stands dismissed.

10. It is made clear that the findings recorded herein above are based on the factual matrix and not deciding any of the rights of the parties qua pending civil suit.

(N.W. SAMBRE, J.)

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