

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

CRIMINAL WRIT PETITION NO. 901 OF 2013

Gojarbai w/o. Ankush Babalsure & Anr. .. Applicants

Versus

Ankush s/o. Dashrath Babalsure & Anr. .. Respondents

Smt. M.S. Mhase, Advocate for the applicants.

Mr. S.B. Choudhari, Advocate for R-1.

Mr. S.D. Ghayal, APP for respondent/State.

CORAM : A.V.NIRGUDE, J.

DATED : 01.03.2016

P.C. :-

1. Heard. Petitioner No.1 is said to be wife of respondent No.1. She and petitioner No.2, who is her minor daughter, had filed application under section 125 of the Cr.P.C. against respondent No.1. In defence, respondent No.1 stated that though he is father of petitioner No.2, but petitioner No.1 was not his legally wedded wife. He specifically asserted that her first marriage with one Subhash was still subsisting and so whatever happened between him and petitioner No.1 was not lawful marriage.

2. In view of this defence, the question that arose for the Trial Court was 'whether petitioner No.1 could prove her lawful marriage with respondent No.1?' In the teeth of defence about petitioner No.1's earlier marriage, she ought to have led evidence to indicate that her earlier marriage was dissolved lawfully etc. But it appears, from whatever record, which is before me, that she did not lead evidence. On the contrary, respondent No.1 led evidence. This evidence was not convenient to the petitioner No.1 and her claim was denied by both the Courts below.

3. In this case, the question of fact before the Trial Court was whether petitioner No.1 could prove that her earlier marriage was dissolved lawfully. It appears from the record that petitioner No.1 and her previous husband dissolved their marriage in presence of panchas. They did not go to Civil Court and get divorce decree. It appears to me that petitioner No.1 is trying to suggest that her previous marriage was dissolved through 'customary divorce', which is lawful in some communities in this State. Customary divorce is required to be proved and apparently petitioner No.1 did not provide such proof.

2. I am, therefore, inclined to remand the case back to the Lower Court where petitioner No.1 should be given an opportunity to prove lawful dissolution of her previous marriage. The order passed against her refusing her maintenance is set aside and the case is remanded back to the Trial Court only to the extent of application of maintenance of petitioner No.1. Petitioner No.2 is already getting maintenance from respondent No.1 and that position has not been disturbed. The parties shall appear before the Trial Court on 15.03.2016.

3. The Criminal Writ Petition accordingly stands disposed of.

[A.V.NIRGUDE, J.]