

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

CRIMINAL APPLICATION NO.5661 OF 2016 IN
CRIMINAL WRIT PETITION NO.753 OF 2016

Nanasaheb s/o Sakharam Kandalkar ... APPLICANT

VERSUS

Alka Nanasaheb Kandalkar
and others ... RESPONDENTS

.....
Shri A.N. Nagargoje, Advocate for applicant
.....

CORAM: N.W. SAMBRE, J.

DATED: 24th October, 2016.

ORAL ORDER :

1. Mr. Nagargoje, learned counsel for the applicant would submit that, order passed under Section 125 of the Criminal Procedure Code is not sustainable as he would raise the issue of discharge of burden by the respondent wife so as to prove that she is legally wedded wife of the petitioner. By relying upon the judgment of the Apex Court in the matter of **Savitaben Somabhai Bhatiya Vs. State of Gujarat & ors.,** reported in **(2005) 3 SCC 636**, he would urge that, unless it

is proved that the respondent is legally wedded wife, the benefit of Section 125 of the Criminal Procedure Code is not available to the respondents. According to him, having denied the relationship with the respondents, the child born out of the said relationship whether is entitled for maintenance is an issue which should have been considered by the learned court below before passing the order of maintenance.

2. Upon perusal of the order impugned, dated 12.1.2016, passed by the Judicial Magistrate, First Class, Kopargaon, awarding maintenance of Rs.1500/- to the respondent No.1 wife and Rs.1000/- to each of respondent Nos.2 and 3, who are claimed to be daughter and son, confirmed in Revision No.11/2016 vide judgment and order dated 20.5.2016, passed by the Additional Sessions Judge, Kopargaon, it is noted that, in response to the attempt of the present applicant to do away with the liability and responsibility to pay maintenance by denying the relationship, the prayer of respondent moved vide application Exh.43 for D.N.A. test was opposed by the present petitioner. The said approach on the part of the petitioner has rightly weighed before the learned Magistrate for drawing adverse inference against him.

3. The another aspect of the matter is, the petitioner, in reply to the application under Section 125 of the Criminal Procedure Code for grant of maintenance, has come up with a case that he married to Sunita Vanase on 11.5.1997. However, there is no categorical statement in the petition that the petitioner is residing and maintaining the said Sunita and her daughter Dipali. One more aspect which the Court must take judicial note of is, the petitioner and respondent No.1 are closely related as the respondent No.1 appears to be daughter of the maternal uncle of the petitioner. Apart from above, it is not in dispute that for the marriage in question, the petitioner was prosecuted for an offence under Section 494 of the Indian Penal Code.

4. In this background, in my opinion, the view expressed by both the courts below awarding maintenance does not call for any interference in the extraordinary jurisdiction. Criminal Application is dismissed.

(N.W. SAMBRE, J.)