

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

CRIMINAL WRIT PETITION NO. 1482 OF 2015

Vithal s/o Pandurang Kalam,
Age: 37 years, Occ: Agri.,
R/o. Osman Nagar, Tq. Kandhar,
Dist. Nanded.

...Petitioner

versus

Savitrabai w/o Vithal Kalam,
Age: 35 years, Occ: Agri/Labour & Household,
R/o. Bhogaon, Tq. Palam,
Dist. Nanded.

...Respondent

.....
Mr. A.G. Godhamgaonkar, Advocate for petitioner
Mr. M.P.Kale, Advocate for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 17th MARCH, 2016

ORAL ORDER :

Misc. Criminal Application No. 70 of 2012 came to be filed by the respondent-wife claiming maintenance under Section 125(1) of Code of Criminal Procedure. The said application came to be allowed by an order dated 09/04/2014 passed by learned Magistrate, whereby directed the present petitioner to pay maintenance of Rs.1000/- per month to respondent and Rs.1200/- per month towards expenses of the proceedings. The plea that was sought to be raised by the petitioner in the defence was that he was never married to the respondent.

2. Mr. Godhamgaonkar, learned Counsel for the petitioner, while trying to make out a case for interference in the extraordinary writ jurisdiction of this Court, would urge that the petitioner herein in support of his claim that he was never married to respondent, has produced around 17 documents alongwith list Exhibit-9, four documents alongwith list Exhibit-33 and 12 documents alongwith list Exhibit-29 and three documents alongwith list Exhibit-32. According to him, in the light of said documents as were produced by the petitioner before revisional Court, it was expected of the revisional Court to remand back the matter to learned Magistrate and give an opportunity to adduce the evidence. He would then submit that in extraordinary writ jurisdiction, this Court must interfere, having regard to the nature of documents, which are placed on record of revisional Court, in the form of documentary evidence.

3. Mr. Kale, learned Counsel for the respondent would urge that, the Magistrate in the present case, while dealing with the application under Section 125 of Code of Criminal Procedure, has given complete opportunity to both the parties. According to him, the respondent examined herself along with her father Dattaram at Exhibits-9 and 10. He would submit that the oral evidence and documentary evidence as was brought on record, was found to be

basis for ordering payment of maintenance.

4. With the assistance, I have perused both the judgments and orders delivered by learned Magistrate and learned Sessions Judge. It is required to be noted that the respondent, so as to establish her claim, has relied upon her own oral evidence and evidence of her father. Her husband, though has appeared and filed reply to the said application, has not placed on record any documents and has also not entered into witness box.

5. The plea of the defence as was raised by the present petitioner-husband is, simplicitor denial of relationship, as the petitioner never married to the respondent.

6. While proving the case, the respondent-wife, in addition to her and her father's evidence, has produced on record the marriage invitation card along with other documents. The said evidence was found to be a basis for ordering payment of maintenance. It is not the case of petitioner that learned Magistrate has denied him opportunity to lead evidence, though in law, he was entitled for, and has sought to exercise such a right before learned Magistrate.

7. In this background, in my opinion, the order as is passed by learned Magistrate, which is further confirmed in revision, does not call for interference in extraordinary writ jurisdiction. As such, the petition fails, stands dismissed.

[N.W. SAMBRE, J.]