

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.267 OF 2007

Smt. Shindhubai Yeshodas Bhingardive.] ... Petitioner

Versus

1. Shri Yeshodas Raghuba Bhingardive,]
2. State of Maharashtra.] ... Respondents

None present.

CORAM :- M. S. SONAK, J.
DATE :- JANUARY 15, 2016

P. C. :-

1. Neither the parties nor their Advocates are present. However, considering that this matter relates to the year 2007 and the order made on 17/09/2007, this petition is taken up for final disposal. On 17/09/2007, the following order was passed :-

“Heard Mr. Master the learned counsel for the petitioner-wife.

Rule. The learned APP appears for the State.

Rule on interim relief, returnable on 27/11/2007 with a clear notice to the respondent no.1 that the main petition itself could be finally heard and decided on that date.

By way of ad-interim relief, stay to the impugned order dated 3/8/2006 passed by the learned III Ad-hoc Additional Sessions Judge at Baramati until the next date.”

2. Thereafter on 10/07/2008, the following order came to be made :-

“Office noting shows that the first respondent is duly served and is represented by an Advocate. It is stated that even a reply has been filed by the first respondent. Hence, petition shall be placed for final hearing as per its turn.”

3. The challenge in this petition is to the Judgment and Order dated 03/08/2006 by which the Sessions Judge, Baramati ('SJ') in Criminal Revision Application No.40 of 2006, by which the learned SJ has set aside the Judgment and Order dated 23/03/2006 made by the JMFC, Daund, awarding the petitioner maintenance at the rate of Rs.535/- per month from the date of petitioner seeking maintenance.

4. The learned JMFC, by Judgment and Order dated 23/03/2006, had held that the petitioner is the legally wedded wife of the respondent no.1, she is unable to maintain herself and therefore, the respondent no.1 is liable to pay her maintenance at the rate of Rs.525/- per month. The learned SJ, by the impugned Judgment and Order dated 03/08/2006, has reversed the JMFC on the only ground that the petitioner has been unable to establish that she was the legally wedded wife of the respondent no.1.

5. The impugned Judgment and Order cannot be sustained for several reasons. In the first place, the learned SJ has exceeded the bounds of revisional jurisdiction. The learned SJ has re-assessed the entire evidence on record, as if, he was exercising appellate

jurisdiction. Secondly, the learned SJ has failed to appreciate that proceedings under Section 125 of the Code of Criminal Code, 1973 ('Cr.P.C.') are summary in nature and the decision rendered therein is always tentative and not intended to affect the civil rights of the parties. Therefore, the evidence in the context of the marriage between the petitioner and the respondent no.1 was required to be appreciated by keeping in mind this basic postulate. Thirdly, the learned SJ had unduly discarded the testimonies of petitioner's brother and her uncle on the factum of marriage by merely observing that they are interested witnesses. The brother and the uncle of the petitioner, are the natural witnesses, particularly considering the circumstance that there is no dispute that the petitioner hails from '*Nav-Buddha*' community and the marriage came to be solemnized as per the *Buddhist* rights and rituals. The circumstance that entry in the register maintained by the '*Bhikshuk*' was not produced, is not a sufficient circumstance, particularly considering the summary nature of jurisdiction to be exercised by the learned JMFC in proceeding under Section 125 of Cr.P.C. At least 3 witnesses have deposed to the factum of marriage and if, the Judgment and Order of the learned JMFC is to be perused, no serious dent has been made to their testimonies. The petitioner has also placed on record marriage invitation card and the photographs. However, even if this material is excluded from consideration, on the basis of the material already on record, it cannot be said that there was any justification for the learned SJ to interfere with the findings of fact recorded by the learned JMFC. For the aforesaid reasons, the impugned Judgment

and Order dated 03/08/2006 made by the learned SJ is set aside and the Judgment and Order dated 23/03/2006 made by the learned JMFC is restored. The plea of the petitioner for enhancement of maintenance is however rejected. The petitioner shall be at liberty to seek variation in the maintenance amount by instituting appropriate proceedings before the appropriate forum. If such proceedings are instituted, the same shall be considered by the appropriate authority in accordance with law.

6. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)