

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

Criminal Writ Petition No.19 of 2006

- 1) Sarjabai w/o Shivraj Bhosikar,
Age 26 years,
Occupation : Household,
R/o Pimpran, Taluka Purna,
District Nanded.
- 2) Subhangi d/o Shivraj Bhosikar,
Age 5 years.
- 3) Madhumala d/o Shivraj Bhosikar,
Age 3 1/2 years.
Both minors under guardianship
of real mother
Sarjabai w/o Shivraj Bhosikar
R/o As above. **.. Petitioners.**

Versus

- 1) Shivraj s/o Gyanoba Bhosikar,
Age 32 years,
Occupation: Agriculture,
R/o Panbhosi, Taluka Kandhar,
District Nanded.
- 2) The State of Maharashtra. **.. Respondents.**

Shri. G.R. Ingole, Advocate, holding for Shri. G.R. Patil,
Advocate, for petitioners.

Shri. H.I. Pathan, Advocate, for respondent No.1.

Shri. S.J. Salgare, Additional Public Prosecutor, for
respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 11 JANUARY 2017

ORAL JUDGMENT:

1) The petition is filed to challenge the judgment and order of Criminal Revision No.39/2004 which was pending before the Sessions Court Nanded. The revision filed by the present respondent Shivraj to challenge the judgment and order of proceeding filed under section 125 of the Code of Criminal Procedure by present petitioner Sarjabai is allowed against her and the maintenance order made in her favour is set aside by the Sessions Court. Both sides are heard.

2) It is the case of petitioner Sarjabai that she married with respondent in 1997 and two daughters namely Shubhangi and Madhumala were born to her from Shivraj. It is her case that she was ill-treated as the demand made by husband Shivraj of cash amount and articles like television were not met with. It is her case that ultimately in September 2000 she was driven out of matrimonial house by Shivraj and since then no

arrangement for their maintenance is made by Shivraj. It is contended that after 2000 Shivraj married with other lady by name Tarkeshwari on 9-9-2001 and there is no possibility that there will be resumption of cohabitation or Shivraj will maintain them. It is contended that, she has no source of income and she is not able to maintain herself and also the two daughters. She had made contentions with regard to the income of Shivraj.

3) Shivraj appeared in the proceeding and he filed reply. He admitted that he had married with Sarjabai but he denied that she is his legally wedded wife. He denied the allegation of ill-treatment made against him. He contended that she left his company on her own and she is living with her parents.

4) Shivraj contended that the petitioner Sarjabai is his second wife and he was already married and one Minakshi was his first wife

5) Both the sides gave evidence. As the factum of marriage was admitted by Shivraj and Minakshi was not

examined, the Judicial Magistrate First Class granted maintenance at the rate of Rs.500/- per month in favour of Sarjabai and maintenance at the same rate was granted in favour of two daughters. Learned Sessions Judge has set side the decision by holding that Sarjabai has admitted in her evidence that Shivraj had married with Minakshi prior to the marriage of Sarjabai with Shivraj. Learned Sessions Judge has held that as the marriage of Sarjabai with Shviraj was not legal, she being second wife, she is not entitled to get maintenance.

6) Aforesaid circumstances show that only the point of factum of marriage with Shivraj, the entitlement of Sarjabai to get maintenance is involved in the present matter. On this point learned counsel for the petitioner Sarjabai relied on the observations made by the Apex Court in the case reported as **AIR 2014 SC 869 (Badshah v Urmila Badshah Godse)**. In that case also the proceeding under section 125 of the Code of Criminal Procedure was filed by second wife and she had 2 issues from husband, opponent. There was a circumstance like concealment of the first marriage by husband. In view of

the circumstances of that case the Apex Court held that the second wife needs to be treated as wife for purpose of provision of Section 125 of the Cr.P.C. The Apex Court has laid down that in such case it is bounden duty of the courts to advance the cause of social justice. Reliance was also placed on the observations made by this Court in the case reported as **2012 ALL MR (Cri) 3913 (Meerabai v. Bhimrao)**. This Court held that the second wife was entitled to get maintenance when there is similar allegation. This Court referred the cases of the Apex Court like (1) **AIR 1988 SC 644 (Yamunabai v. Anantrao)** and (2) **AIR 1999 SC 3348 (Dwarika Prasad v Bidyut Dixit)**.

7) On the other hand, learned counsel for the respondent, husband placed reliance on the reported cases like (1) **2015 ALL MR (Cri) 1043 (Sau. Parighabai v. Raghunath)**; (2) **2014(3) AIR Bom R (Cri) 276 (Rajaram v. State of Maharashtra)**; and, (3) **2015 (3) AIR Bom R (Cri) 379 (Deepak v. State of Maharashtra)**. In the first two cases this Court held that the second wife was not entitled. In the case of Rajaram the Court observed that the wife had miserably failed to establish her marriage

with the opponent. In the case of Parighabai there was finding in a partition suit that the wife was not legally wedded wife that she was second wife. These facts were different. In the preset matter factum of marriage is not disputed. The case of Deepak was under provisions of the Protection of Women from Domestic Violence At, 2005 and so the facts of that case were different.

8) In view of the facts of the present matter and as the fact of marriage is not disputed, this Court holds that it was not proper on the part of the learned Sessions Judge to hold that Sarjabai, the petitioner is not entitled to get maintenance. Admittedly Minakshi, so called first wife was not with the respondent Shivraj and he did not examine Minakshi to prove that the marriage tie was still in existence. For the purpose of provision of section 125 of the Cr.P.C. the evidence given by Sarjabai was sufficient.

9) In the result, the petition is allowed. The judgment and order of the Sessions Court allowing the revision filed by the husband against the order of maintenance in favour of the petitioner is hereby quashed

and set aside and the order of maintenance made in favour of present petitioner Sarjabai by learned Judicial Magistrate is restored. Rule made absolute in above terms.

Sd/-
(T.V. NALAWADE, J.)

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