

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 157 OF 2014
IN
CRIMINAL WRIT PETITION NO. 2002 OF 2013**

Sou. Ashabai Sampat Dagle Applicant

IN THE MATTER BETWEEN :

Sou. Ashabai Sampat Dagle Petitioner

Versus

Shri Sampat Sakharam Dagle & Anr. Respondents

Mr. S.T.Bhosale I/by. Dilip Bodake for Applicant.

Mrs. Smita R. Gaidhani for Respondent No.1.

Mr. P.H.Gaikwad, APP for State.

**CORAM : K. K. TATED, J.
DATED : 9TH JUNE, 2017.**

P.C.

. Heard learned Counsel for the parties.

2. By this Application, Applicant - wife is seeking direction against the Respondent - husband to pay a sum of Rs. 5000/- towards interim maintenance amount to her.

3. In the present proceedings, initially Applicant filed Criminal Misc. Application No. 48 of 2005 before the learned

Judicial Magistrate First Class, Chandwad, District Nashik under Section 125 of the Code of Criminal Procedure, 1973 for maintenance. That application was dismissed by the learned Magistrate by Judgment and Order dated 20th November, 2009 holding that Applicant failed to prove the relationship as legally wedded wife with the Respondent - husband.

4. Being aggrieved by the said Judgment and Order, the applicant preferred Criminal Revision Application No. 87 of 2009 before the learned Additional Sessions Judge-II, Niphad. That Criminal Revision Application also stand dismissed by Judgment and Order dated 16th January, 2013.

5. Being aggrieved by the concurrent finding of facts recorded by both the Courts, the Applicant preferred the present Writ Petition under Article 227 of the Constitution of India on the ground that both the Courts below erred in concluding that in the absence of legal marriage, a mere fact that the parties have lived together as husband and wife to the knowledge of the public or otherwise could not confirm on such woman a status of a wife.

6. The Writ Petition was admitted by this Court by order dated 27th January, 2014. By that order, this Court allowed the Applicant to withdraw the amount deposited by the Respondent - husband in trial court subject to outcome of this petition. This Court also granted liberty to the Applicant to prefer appropriate application for interim maintenance during the pendency of the Petition. Hence, the Applicant preferred the present application for maintenance of Rs. 5000/- on the ground narrated in application.

7. The learned Counsel Mr. Bhosale appearing on behalf of Applicant submit that the Applicant has filed Regular Civil Suit No. 112 of 2010 in the Court of Jt. Civil Judge (Senior Division), Niphad, District Nashik for declaration that the marriage between Respondent – Sampat Sakharam Dagale and Sau. Latabai Nandu Sable was null and void. In the course of argument, the learned Counsel for Applicant placed on record the copy of Complaint of the said Regular Civil Suit No. 112 of 2010. The learned Counsel for Applicant submit that Joint Civil Judge (Senior Division), Niphad by Judgment and Decree dated 6th December, 2014 has declared that the Applicant is wife of Respondent Sampat Sakharam Dagale. He submit that in view of subsequent events i.e. Judgment and Decree dated 6th December, 2014 in Regular Civil Suit No. 112 of 2010 Applicant is entitled to claim the maintenance charges from Respondent. Hence, the Respondent may be directed to pay a sum of Rs. 5000/- per month towards the interim maintenance amount to the Applicant – Wife.

8. The present Civil Application opposed by the Respondent – husband. Respondent – husband filed Affidavit in-reply dated 3rd January, 2015. The learned Counsel Mrs. Gaidhani appearing on behalf of Respondent no.1 submit that they preferred the Appeal against the Judgment and Decree passed by Jt. Civil Judge (Senior Division), Niphad in Regular Civil Suit No. 112 of 2010. The said appeal is pending for hearing and final disposal on its own merits. She submit that in view of the appeal filed by the Respondent, the Applicant is not entitled to any maintenance charges. She further submit that being the concurrent finding of

facts recorded by both the Courts there is no question of entertaining the present application unless the Writ Petition is decided finally on its own merits. Hence, there is no substance in the present application and same is required to be dismissed with costs.

9. I heard both the sides at length. In the present proceedings though the Applicant filed Criminal Application under Section 125 of the Code of Criminal Procedure claiming maintenance at the rate of 900/- per month from the Respondent as a wife, the same was rejected by the learned Magistrate on the ground that Applicant failed to prove her relationship as a legally wedded wife with Respondent. The same view was taken by the Appellate Court also.

10. Bare reading of the plaint of Regular Civil Suit No. 112 of 2010 shows that the Applicant made a prayer in the said suit for declaration that there was no marriage between Respondent – Sampat Sakharam Dhagale and Lata Nandu Sable. There was no prayer in that suit for declaration that the Applicant may be declared as a legally wedded wife of the Respondent herein. In spite of that, the Joint Civil Judge (Senior Division), Niphad passed exparte decree dated 6th December, 2014 beyond the pleadings on record in that suit. Apart from that, the said decree is already challenged by the Respondent in the Appeal and that Appeal is pending for hearing on its own merits.

11. Considering the above mentioned facts, concurrent finding recorded by both the Courts below, decree passed by the Jt.

Civil Judge (Senior Divison), Niphad in Regular Civil Suit No. 112 of 2010 and the said decree is already challenged by the Respondent by preferring Appeal. I do not find any reason to entertain the present application. Hence, Criminal Application No. 157 of 2014 stand rejected.

(K.K.TATED, J.)