

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.445/2017

Sheikh Ibrahim Sheikh Jamru ..vs.. Smt. Indumati Sheikh Ibrahim and anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Ms Sheetal Deshpande, Advocate for applicant.

CORAM : V.M. DESHPANDE, J.

DATED : AUGUST 2, 2017

The challenge that is set up in this application is to the judgment and order passed by the learned Additional Sessions Judge, Akola in Criminal Revision No.107/2011 by which the learned revisional Court dismissed the revision and thereby confirmed the judgment and order passed by the learned Judicial Magistrate First Class, Akola Court No. 8 in Miscellaneous Criminal Case No.59/2011 by which he partly allowed the application filed on behalf of the non applicants under Section 125 of the Code of Criminal Procedure and granted maintenance at the rate of Rs.2500/- per month.

Heard Ms Sheetal Deshpande, learned counsel for the applicant at length. She submitted that the application filed on behalf of the non applicant itself was not maintainable inasmuch as according to her there was no marriage between the applicant and the non

applicant. She submitted that earlier the non applicant was married to one Chhangani and from him she delivered two children. She submitted that in absence of any proof on record about the divorce in between the said Chhangani and non applicant there is no valid marriage in between the applicant and non applicant.

At the first blush, the statement made by the learned counsel for the applicant appears to be very attractive. However, on closer scrutiny of the pleadings and the evidence brought on record, it is required to be rejected. The non applicant herself has stated in her application that earlier two daughters were begotten to her from the said Chhangani. However, during the course of her evidence, she has stated that her father sold her to the said person and there was no marriage between her and the said Chhangani. Further, the applicant himself has given a memorandum before the Registrar of Marriages and the Registrar of Marriages has given the certificate about the marriage under the Bombay Registration of Marriages Act, 1963. The said certificate still holds the field. In this background, absence of pleadings in the written statement filed by the applicant that there was no divorce between said Chhangani and present non applicant assumes importance. Thus, it is totally incorrect on the part of the applicant that there was no marriage between him and the non applicant.

Further, the applicant is serving in railway department. The Courts below have noticed that he is drawing salary of about Rs.20,000/- per month. One of the girls of the non applicant, though begotten from the said Chhangani, is mentally retarded.

In that view of the matter, maintenance at the rate of Rs.2,500/- per month cannot be said to be exorbitant. Hence, the application is rejected.

JUDGE

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