

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

CRIMINAL APPLICATION NO. 770 OF 2014

Dhanaji Venkatrao More,
Age 50 years, Occupation Agriculture,
R/o. Bhakaskheda, Taluka Udgir,
District Latur.

.. Applicant

Versus

1 Smt. Sagarbai posed as w/o. Dhanaji
More, Age 45 years, Occupation : Agri.,
R/o. Bhakaskheda, Taluka Udgir,
District Latur.

2 The State of Maharashtra,
Through Police Station Udgir,
District Latur.

.. Respondents

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Mr. P. G. Godhamgaonkar, Advocate for Applicant.
Mr. J. M. Murkute, Advocate for Respondent No.1.
Mr. K. D. Mundhe, APP for Respondent No.2.

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CORAM : K.K. SONAWANE, J.

DATED : 18th MARCH, 2019

JUDGMENT :-

The applicant, by taking recourse of remedy under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), preferred present application to get quash and set-aside the criminal proceedings bearing Miscellaneous Criminal Application No. 373 of 2013, filed on behalf of respondent No.1 – Sagarbai w/o. Dhanaji More (wife), under Section 125 of Cr.P.C. for maintenance as well as the impugned order for relief of interim maintenance dated 18-01-2014, below Exhibit-3, passed by the learned Judicial Magistrate, First Class, Udgir, District Latur.

2. It has been alleged that respondent- Sagarbai initiated proceedings against the applicant for maintenance under Section 125 of Cr.P.C. bearing M.Cr.A. 373 of 2013, before learned Judicial Magistrate, Udgir, District Latur. According to respondent-Sagarbai, she is legally wedded wife of the applicant and their marriage was solemnized prior to 25-26 years. After marriage, she joined company of the applicant for cohabitation at her matrimonial home. Initially for about 5 to 6 years, she received good treatment from her husband applicant-Dhanaji. But, thereafter, she was maltreated and harassed physically and mentally for the reason that she could not conceive. She was tortured, by saying a barren woman. Eventually, the applicant performed second marriage with one Sangita. Both the wives of applicant were residing in one and the same matrimonial home. But, respondent- Sagarbai was subsequently harassed mentally and physically by the couple. There was marital discord in between the spouses i.e. applicant and respondent- Sagarbai. But, due to intervention of parents and other respectable persons from the village, the marital discord was settled amicably and the applicant-husband agreed to give 1 Acre agriculture land and Rs.500/- per month to the wife Sagarbai. But, all efforts did not evoke result. The applicant-husband failed to comply with the terms and conditions of compromise. In contrast, he succeeded to drive the respondent- Sagarbai from matrimonial home. The hapless respondent - Sagarbai, took the shelter at the house of her parents and eking livelihood by doing labour work. According to respondent- Sagarbai, applicant-husband used to get annual income of Rs.10,00,000/- (Rs. Ten Lakhs only) from agriculture land. Therefore, she made demand of Rs.5,000/- per month as maintenance from the applicant-husband.

3. On institution of criminal proceedings under Section 125 of Cr.P.C. by the respondent-wife, the learned Magistrate issued notices to the applicant-husband for his appearance in the proceedings. In response, the applicant-husband appeared and raised objections to the relief of maintenance claimed on behalf of respondent- Sagarbai. The applicant-husband denied marital relations and any sort of cruelty or torture to her on his part. Despite the same, the learned Magistrate entertained the application filed by respondent - Sagarbai for interim maintenance. At last, the learned trial Court, after hearing both sides, granted interim maintenance of Rs.1,500/- per month from the date of application till final order and passed impugned order, which is also the part of subject matter in this application.

4. Being aggrieved with the proceedings of maintenance initiated by the Sagarbai under Section 125 of Cr.P.C. as well as impugned order of interim maintenance passed by the learned Magistrate, the applicant knocked the door of this Court, by invoking remedy under Section 482 of Cr.P.C. and prayed to quash and set-aside the entire proceedings of maintenance initiated by respondent - Sagarbai under Section 125 of Cr.P.C. The applicant also put in question the legality and validity of the impugned order of interim maintenance granted by the learned Magistrate in favour of respondent Sagarbai.

5. Learned counsel Shri. Godhamgaonkar for the applicant vehemently submits that applicant- Dhanaji More has no concerned at all with the respondent- Sagarbai. There were no marital relations in between applicant and respondent Sagarbai. According to learned counsel, respondent- Sagarbai performed the marriage with one Ashok s/o. Piraji Suryawanshi, resident of Udgir and their marital relations are

still subsists. There are in-laws as well as brother-in-law to the respondent- Sagarbai. Moreover, learned counsel further submits that the respondent- Sagarbai committed mischief and obtained certificate being a woman below the poverty line to extract benefits of the Government scheme. In the document, she has mentioned her name as Sagarbai d/o. Venkatrao Kamble, resident of Bhakaskheda. She has also availed Government benefits including ration, etc., by obtaining allegedly forged ration card and other documents. Learned counsel for the applicant submits that respondent- Sagarbai is belonging from *Maang* community, whereas, applicant is from the *Maratha* community. Learned counsel added that the marriage of the applicant solemnized with one Sangita on 25-04-1992, as per Hindu rites. The wife - Sangita has begotten two daughters and one son from the husband-applicant- Dhanaji More, during wedlock. There are documents about birth of children of applicant. Learned counsel further assailed that all these factual aspects are not considered by learned Magistrate in proper manner. Despite the same, the learned Magistrate ventured to grant interim maintenance of Rs.1500/- per month in favour of respondent - Sagarbai. The impugned order of interim maintenance is erroneous, illegal and bad in law. He submits that there are no marital relations in between applicant and respondent- Sagarbai. Therefore, order of interim maintenance passed by the learned Magistrate caused miscarriage of justice. The learned Magistrate did not appreciate the application below Exhibit-6 filed by the applicant seeking time to file revision application before the Sessions Court. Learned counsel explained the circumstances on record in detail and submits that the proceedings filed under Section 125 of Cr.P.C. against the applicant without any marital relations is an abuse of process of law. Learned

Magistrate committed error in taking cognizance of the matter under Section 125 of Cr.P.C. Therefore, the proceeding is required to be quashed and set-aside. Learned counsel, in support of his contentions, relied upon judicial precedents of the Honourable Apex Court and this Court, in the cases of – ***State of Haryana and others Versus Ch. Bhajan Lal and others, reported in, AIR 1992 SC 604, Appollo Tyres Ltd. Versus Mrs. Dr. Shashitai Bhagwan Ahire and others, reported in, 2008 Cri.L.J. 3758, Pepsi Foods Ltd. and another Versus Special Judicial Magistrate and others, reported in 1998(1) Mh.L.J. 599, Amitbhai Anilchandra Shah Versus Central Bureau of Investigation and another, reported in (2013) 6 SCC 348, and Reportable Judgment in Criminal Appeal No. 1395 of 2018 arising out of SLP (Cri) No. 3730 of 2016, dated 15-11-2018 (Anand Kumar Mohatta and Anr Versus State (Government of NCT of Delhi) Department of Home and Anr.)***.

6. Per contra, learned counsel for the respondent – Sagarbai raised objections to the contentions propounded on behalf of applicant and submits that the present application filed by the applicant under Section 482 of Cr.P.C. is not maintainable as per the provisions of Law. The applicant has an efficacious alternate remedy under the Law. The respondent – Sagarbai approached to the learned Magistrate for maintenance under Section 125 of Cr.P.C. claiming her as a legally wedded wife of applicant. Learned Magistrate considered the circumstances on record and grant relief of interim maintenance to the respondent- Sagarbai. Learned counsel explained the object and purpose of the summary proceedings under Section 125 of Cr.P.C. available for the destitute wife. The applicant-husband denied the

marital relations on the basis of relevant documents. According to the learned counsel for respondent, all these documents are required to be proved. The sole version of the applicant-husband can not be considered as an gospel truth. It can not be said that there was abuse of process of law. The learned trial Court correctly appreciated the factual aspects and taken cognizance for further process. Learned counsel for the respondent- Sagarbai relied upon the exposition of law delineated in the case of - **V. K. Jain and others Versus Pratap V. Patode and another**, reported in, **2005 (3) Mh.L.J. 778**.

7. Having given anxious consideration to the arguments advanced on behalf of both sides, I do not find any substance and merits in the contentions propounded on behalf of applicant for invoking inherent powers under Section 482 of Cr.P.C. in favour of applicant. As referred above, respondent- Sagarbai initiated proceedings under Section 125 of Cr.P.C. for maintenance against the applicant-husband. According to respondent - Sagarbai, she married with the applicant prior to 25-26 years. She received good treatment from husband and others during cohabitation for about 5 to 6 years of the marriage. Thereafter, she was maltreated and harassed by the husband as she could not conceived during wedlock. The husband used to torture and scold her by saying a barren woman. It has been alleged that the applicant-husband with the consent of respondent- Sagarbai performed second marriage with one Sangita. But, thereafter, she was subjected to cruelty, and eventually, she was driven out from the matrimonial home. It is true that the applicant-husband appeared before learned Magistrate and filed an application (Exhibit-6) seeking time to approach to the Sessions Court for filing revision application. It

has been alleged that there was no marital relations between applicant and respondent – Sagarbai. The applicant has performed marriage with one Sangita and she begotten three children during wedlock from the applicant. Respondent- Sagarbai married with one Ashok s/o. Piraji Suryawanshi, as per their religious rites and their marital relations are still subsists. The applicant-husband cast allegations that the respondent- Sagarbai obtained certificate, etc. from the Government by showing her name as Sagarbai d/o. Venkatrao Kamble. She committed fraud while obtaining certificate to get benefits from the Government schemes. According to applicant, the learned Magistrate ought to have rejected the application filed under Section 125 of Cr.P.C. by the respondent- Sagarbai. But, the learned Magistrate committed error by taking cognizance of the same as well as grant relief of interim maintenance in favour of applicant.

8. The intense scrutiny of the entire factual aspects of the matter and the pleadings propounded on behalf of both sides, I find that there is no illegality committed by the learned Magistrate while dealing with the application seeking relief of maintenance on behalf of respondent- Sagarbai.

9. The provision of Section 125 of Cr.P.C. is a measure of social justice to protect the weaker sections like women and children. The object to compel a man to perform the moral obligation which he owes to society in respect of his wife and children and parents so that they are not left beggared and destituted on the scrap-heap of society. The Section 125 of Cr.P.C. provides only speedy remedy against starvation of a deserted wife or children. It is a summary procedure, which does not cover entirely the same grounds as a civil liability of a

husband under personal law to maintain of his wife. It is also the rule of law that the findings of the summery proceedings under Section 125 of Cr.P.C. are not final and the parties can agitate their rights in a Civil Court. The right under Section 125 of Cr.P.C. is a distinct right. Independent of right which should wife or children may or may not have under the personal law.

10. In the matter in hand, the respondent- Sagarbai claimed the maintenance against the applicant being his legally wedded wife. The applicant denied any sort of marital relations with the respondent- Sagarbai. But, all these factual aspects are required to be tested on the anvil of merit. In such circumstances, it is preposterous to appreciate that the learned Magistrate should refrain himself from taking cognizance of the application filed by the respondent- Sagarbai under Section 125 of Cr.P.C. The impugned order of interim maintenance granted by learned trial Court also appears just, proper and reasonable. The order passed by learned Magistrate below application (Exhibit-6) filed by the applicant-husband seeking time to approach to the Revision Court appears justified. The application was obviously premature and not sustainable within the ambit of law. The learned Magistrate had no impediment to proceed for appreciation of circumstances to grant interim maintenance. In such circumstances, there was no illegality or perversity in the impugned order passed by learned Magistrate, nor the action of taking cognizance of the petition filed under Section 125 of Cr.P.C. by respondent is questionable or debatable in this proceeding. It can not be perceived that there was abuse of process of law, and hence, the interference by exercising inherent jurisdiction under Section 482 of Cr.P.C. is unwarranted.

11. Moreover, learned counsel for the respondent raised objections about maintainability of the present application filed under Section 482 of Cr.P.C. on the ground that the Court can not exercise powers under Section 482 of Cr.P.C. when the alternate efficacious remedy to approach to Revisional Court is available to the applicant against the impugned order of taking cognizance of the application filed under Section 125 of Cr.P.C. by respondent – Sagarbai. I find force in the contentions put-forth on behalf of respondent – Sagarbai.

12. As referred above, this Court in the case of **V. K. Jain and others Versus Pratap V. Patode and another** (cited *supra*), observed that, powers of the High Court under Section 482 of Cr.P.C. should not be resorted to if there is a specific provision available in the Code for redressal of grievances to the aggrieved party. In the matter in hand, there is no doubt that, the applicant has an efficacious alternate remedy to approach to the Revisional Court in respect of order passed by the learned Magistrate for taking cognizance of the petition filed under Section 125 of Cr.P.C. or grant relief of interim maintenance in favour of wife – respondent. When the specific remedy for redressal of grievances are available to the applicant, it would unjust and improper for this Court to exercise inherent powers under Section 482 Cr.P.C. for appreciation of contentions propounded on behalf of applicant.

13. In view of aforesaid discussion, there is no merit in the application filed by the applicant under Section 482 of Cr.P.C. before this Court. The interference is totally unwarranted. In the result,

application deserves to be rejected. Accordingly, the criminal application stands dismissed. Rule stands discharged. No order as to costs.

[K. K. SONAWANE, J.]

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