

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.342 OF 2005

Chandrakala w/o Navnath Dikale,
Age-35 years, Occu:Household,
R/o-Tandulwadi, Tq-Kalamb,
Dist-Osmanabad

...APPLICANT

VERSUS

Navnath s/o Govindrao Dikale,
Age-52 years, Occu:Service,
R/o-House No.847, Godil Plot
Uplai Road, Barshi,
Dist-Solapur.

...RESPONDENT

...

Mr.V.D. Sapkal Advocate for Applicant.
None present for Respondent.

...

CORAM: V.M. DESHPANDE, J.

DATE : 8TH APRIL, 2019

ORAL JUDGMENT :

1. Heard Shri V.D. Sapkal, learned counsel
for the Applicant. None for the Applicant, though

served.

2. The Applicant preferred an application in the Court of Judicial Magistrate, First Class, Kallam, Dist-Osmanabad, against the Respondent, under Section 125 of the Code of Criminal Procedure. The said application filed on behalf of the Applicant was registered as Misc. Criminal Application No.10 of 2003.

3. The pleadings in the said application, shows that the Respondent's first wife was one Mathura. After her death in the year 1972-73, Respondent got married with the Applicant and cohabited with her for about 10 to 12 years. Since she was issue-less, she was neglected and in the year 1980, Respondent married with one Suwarna and from the said marriage, got three children. It is also stated in the application that she resides at village Tandulwadi of Kallam Taluka. It is also

stated that Respondent is working as a helper with the then Maharashtra State Electricity Board, and his monthly salary is Rs.8825/-, besides that, he is having ancestral land and therefore the Applicant prayed that she be granted maintenance at the rate of Rs.1500/- per month.

4. On being summoned, the Respondent appeared and filed written statement (Exhibit-14). He denied the marriage between him and the Applicant, also denied all other allegations made against him.

5. The Applicant entered into the witness box, also examined one Sunil, who was begotten to the Respondent through his first wife Mathura. Thereafter she filed closure purshis (Exhibit-26). The Respondent also entered into the witness box. After the evidence was over, the learned Magistrate, after hearing the parties to the

application, on 5th January, 2005, partly allowed the application filed on behalf of the Applicant and granted maintenance at the rate of Rs.1000/- per month from the date of filing of the application, with a direction to pay costs of Rs.400/-.

6. The said Judgment and order give rise to the two different Revisions, one filed by the present Applicant for enhancement and another by the Respondent for quashment of the order of maintenance. The Revision filed by the Applicant/wife was registered as Criminal Revision Application No.17 of 2005 and the Revision filed by the Respondent was registered as Criminal Revision Application No.13 of 2005. The learned revisional Court, by common Judgment and order dated 27th July, 2005, dismissed the Revision filed by the Applicant/wife, and allowed the Revision filed on behalf of the Respondent/husband. Against

that, the present Revision is filed.

7. The only question this Court is required to decide, after hearing the counsel for the Applicant and after perusing the record, as to whether the Applicant has proved that she was married with the Respondent.

8. In the pleadings, the Applicant did not disclose the date of the marriage nor the place. She only claims that after the demise of Respondent's first wife Mathura, they married sometime in the year 1972-73. The factum of marriage was specifically denied by the Respondent. In view of the specific denial of the marriage, it was incumbent upon the Applicant to prove the marriage and that she is legally married with the Respondent.

9. Though the pleadings it is not expected in detail, in the evidence also the Applicant did

not disclose the date of her marriage with the Respondent. It is not the case through the pleadings or in the evidence by the Applicant that there was only exchange of garland in between them in presence of any Deity. On the contrary, in the cross-examination, she has specifically admitted that her marriage was performed by one priest by name, Sheshadri. Not only that, so many persons attended the marriage ceremony. Neither the priest Sheshadri is examined nor any of the persons who attended the marriage ceremony as claimed by the Applicant, was examined by the Applicant. The evidence of Sunil, the son of the Respondent from his first wife Mathura, is having no consequence to determine the issue, since his evidence is also silent about the marriage between the Respondent and the Applicant.

10. The learned counsel for the Applicant heavily relies on some photographs. By the said

photographs conclusively it cannot be reached to the conclusion that the Applicant was married with the Respondent. Similar is the case in respect of the identity card issued by the Election Commission.

11. The learned Revisional Court, in my view, has correctly evaluated these aspects and correctly recorded the finding that the Applicant did not prove that she was legally married woman with the Respondent nor it is proved that she was residing with the Respondent. Consequently, the Applicant was not entitled to claim any maintenance under Section 125 of the Code of Criminal Procedure, warranting any interference from this Court. Hence the Revision Application is dismissed. Rule is discharged.

[V.M. DESHPANDE, J.]