

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

WRIT PETITION NO. 3155 OF 2018

Subhadra w/o Dyanoba Lokhande @	
Subhadra d/o Vyas Bansode	... Petitioner
Versus	
Dyanoba s/o Raosaheb Lokhande	... Respondent

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Mr. Suhas P. Urgunde, Advocate for petitioner.
Mr. N. D. Kendre, Advocate for respondent.

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CORAM : R. G. AVACHAT, J.

DATED : 21st SEPTEMBER, 2019

PER COURT :-

1. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. The challenge in this writ petition is to the order dated 16.11.2017 passed by learned Joint Civil Judge, Senior Division, Latur on application (Exh.30) in H.M.P. No.247 of 2015. By the impugned order, the application preferred by the respondent-husband for amendment of the marriage petition, has been allowed.

3. The petitioner in this writ petition is the wife of the respondent. Their marriage took place on 13.06.2013. Both of them are the members of constabulary. On 30.10.2015, the respondent-husband filed petition being H.M.P. No.247 of 2015 before the learned Civil Judge, Senior Division, Latur for dissolution of the marriage on the ground of desertion. It has been specifically averred in the petition that for a little over two years next before institution of the marriage petition, both the petitioner and the respondent have not been residing together. As such, the claim of the respondent-husband is that the petitioner-wife deserted him for over two years immediately before 30.10.2015. The marriage petition, therefore, came to be filed for divorce on the ground of desertion.

4. The petitioner-wife filed her written statement on 21.06.2016. It has been averred in the written statement that she was pregnant by the respondent-husband. Thereafter, she delivered a baby. The respondent-husband, therefore, preferred an application for D.N.A. test, since he disputed the paternity of child delivered by the petitioner-wife. The said application was rejected. Be that as it may, the respondent-husband moved application Exhibit-30 for amendment of the marriage petition, so as to make out the case against the petitioner-wife of her adultery.

5. On hearing the parties, the trial Court allowed application (Exhibit.30), observing that rejection of application for D.N.A. test is no ground to refuse the amendment. The petitioner came to know the fact of pregnancy after filing of the written statement etc. The trial Court has exercised its discretion. In the marriage petition, it has been specifically averred that the respondent-husband and the petitioner-wife have not been residing together for little over two years next before institution of the marriage petition on 30.10.2015. The petitioner-wife filed her written statement on 21.06.2016. Thereafter, the petitioner-wife delivered a baby. According to the respondent-husband, since, both of them had not been living together and the petitioner-wife has delivered a baby, he denied paternity of the baby. He contends that the petitioner-wife is leading adulterous wife. The proposed amendment indicates that the respondent-husband claims to have knowledge of the petitioner-wife's pregnancy only after she filed the written statement. Thereafter, the petitioner-wife delivered a baby. As such, a ground of adultery can be said to have accrued to the respondent-husband to seek dissolution of marriage, after institution of the marriage petition. The trial Court, has, therefore, rightly exercised the discretion and allowed the amendment with a view to avoid multiplicity of proceedings. A cause of action arisen subsequently, came

to be allowed to be incorporated in the marriage petition. True, if the allegations are proved to be false, the respondent-husband would face consequences. If the respondent-husband moves application for D.N.A. test again, the Court would decide the same on its own merits. Law in this regard need not be stated.

6. Suffice it to say that, additional ground for dissolution of marriage is said to have arisen, post the petitioner-wife filed her written statement, the respondent-husband was justified in making an application for amendment incorporating the said ground in the marriage petition, already filed for dissolution of marriage on the ground of desertion. No fault, therefore, could be found with the impugned order. The petition, therefore, fails.

7. The writ petition is thus, dismissed.

[R. G. AVACHAT, J.]

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