

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.293 OF 2022

1. Vijayalaxmi Ashok Pande
 2. Rina Kishor Sharma
 3. Kishor Ramesh Sharma
- ... Applicants

Versus

1. The State of Maharashtra
 2. Jayshree Rahul Pande @ Jayshree
Khagendrachandra Sarkar
- ... Respondents

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Mr. S. B. Rajebhosale, Advocate for applicants.

Mr. S. P. Sonpawale, APP for the respondent No.1 – State.

Ms. Mayuri G. Kasturkar, Advocate for respondent No.2.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 05.07.2022

ORDER :-

. Present application has been filed invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure to challenge the order of issuance of notice dated 10.11.2021 by the learned Judicial Magistrate First Class, Sillod, Dist. Aurangabad and also for quashing and setting aside the proceedings in Criminal Miscellaneous Application No.586 of 2021 under Section 125 of the Code of Criminal Procedure before the said Court.

2. Applicant No.1 is the mother of applicant No.2, applicant No.3 is the husband of applicant No.2 and son-in-law of applicant No.1. The respondent No.2 has filed application for getting maintenance under Section 125 of the Code of Criminal Procedure against the present applicants.

3. Heard learned Advocate Mr. S. B. Rajebhosale for applicants, learned APP Mr. S. P. Sonpawale for respondent No.1 – State and learned Advocate Ms. Mayuri G. Kasturkar for respondent No.2.

4. It has been vehemently submitted on behalf of the applicants that the respondent No.2 contends that she got married to Rahul Ashok Pande, who was the son of present applicant No.1 and brother of applicant No.2, on 10.02.2016. Said Rahul Ashok Pande expired on 06.06.2020. The application under Section 125 of the Code of Criminal Procedure has been filed by the present respondent No.2 before the learned Judicial Magistrate First Class on 28.11.2021 i.e. after the death of said Rahul Ashok Pande. It is the case of the applicants that Rahul was married to one Yugandhara @ Vaishali on 12.07.2008. Said Yugandhara @ Vaishali had filed Hindu Marriage Petition No.01 of 2016 before learned Civil Judge Senior Division, Aurangabad for divorce under Section 13 of the Hindu Marriage Act and it came to be decreed

on 06.09.2017. The copy of the judgment in said Hindu Marriage Petition No.01 of 2016 has been produced on record. Therefore, when in the year 2008 itself Rahul was married to another lady and that marriage was subsisting till 06.09.2017, he could not have married legally with present respondent No.2 on 10.02.2016. Even if for the sake of arguments we accept that there is any such kind of right in respondent No.2, yet she cannot get that maintenance from the applicants as the applicant No.1 is an old lady having no source of income of her own. Maintenance cannot be sought from a married sister-in-law and her husband. The learned Magistrate has absolutely not considered as to whether there is any right in the respondent No.2 – original applicant to seek maintenance from the respondents before him. He, therefore, prayed for the quashing of the proceedings.

5. The learned Advocate Ms. Mayuri Kasturkar appearing for respondent No.2 relied on the affidavit-in-reply by respondent No.2, which is nothing but the reiteration of her contents in the application and then she is relying on the marriage invitation card of the marriage between her and deceased Rahul. It is stated that the present applicant No.1 has sold land to applicant No.3 by a sale deed dated 04.11.2016 and in order to show the said fact Mutation Entry No.1105 has been

produced. The other documents are also produced stating that there is land in the name of applicant No.2. She has also produced documents on record to show that she is suffering from illness and it is stated that she require medical assistance. She has also placed on record one document styled as Kararnama, which is alleged to have been executed by respondent No.2 in favour of applicant No.1 on 19.06.2020, however, it is stated that nobody has signed that document. She is also relying on the decision by this Court in ***Ravindra Pralhad Pandeji and others Vs. The State of Maharashtra and Anr.***, [Criminal Application No.213 of 2021 dated 20.08.2021], whereby the said application under Section 12(1) of the Protection of Women from Domestic Violence Act was refused to be quashed and set aside by this Court.

6. It was submitted that since respondent No.2 is unable to maintain herself, and the property of her husband Rahul is in the hands of the applicants, she has no alternative but to seek maintenance under Section 125 of the Code of Criminal Procedure.

7. The learned Advocate appearing for the applicants has then pointed out as to how the marriage invitation card which has been produced as Exh.“R-1” is fabricated document. The venue of the marriage is stated to be Shirdi (Sai Baba Sansthan), Tq. Shirdi, Dist.

Newasa. It was stated that there is no such district by name Newasa in Maharashtra, but taluka Shirdi comes in Ahmednagar district. Further, there is some interpolation in the year of the marriage and if we consider the original application under Section 125 of the Code of Criminal Procedure, she had stated that the marriage had taken place on 10.02.2016, whereas the marriage invitation card gives the date as 10.01.2016.

8. At the outset, the marriage invitation card produced at Exh.“R-1” is a doubtful document. The venue could not have been Shirdi (Sai Baba Sansthan). There is no name of the exact place in town Shirdi where the marriage was to be held. Name of any *Mangal Karyalay* is not given. Another fact to be noted is that present respondent No.2 and her entire family appears to be from West Bengal. In the said document, it is stated that she is from Alipurduar, Dist. Siliguri in West Bengal. If we consider the left hand side of the invitation card, then the persons from Alipurduar, West Bengal were stated to be inviting the persons. Basically why the persons from West Bengal will have invitation in Marathi is a question. Further, in the affidavit-in-reply, she has only denied that she is not the legally wedded wife of deceased Rahul, but she has absolutely not stated anything about the decree that was passed by a competent Court i.e. 4th Joint Civil Judge Senior Division, Aurangabad in Hindu

Marriage Petition No.01 of 2016 on 06.09.2017. Definitely, when the earlier marriage of Rahul was subsisting, he could not have performed a legal marriage with respondent No.2. It is not stated that after the said decree was pronounced, they had once again performed the marriage.

9. Even if for the sake of arguments we accept that original applicant/present respondent No.2 was staying with deceased Rahul as his wife, yet we are required to see whether original applicant can claim maintenance from the respondents. She has not stated as to which property is in the hands of the respondents (present applicants). She states that after death of Rahul, she was driven out of the house and, thereafter, the property has been sold by present applicant No.1 in favour of applicant No.3, but the documents which she has produced in the form of Mutation Entry are in respect of transaction that had taken place in December, 2019, when Rahul was, in fact, alive. He expired on 06.06.2020 and it appears that during that period, even he has not taken any objection for the sale transaction between the applicant No.1 and applicant No.3. Maintenance under Section 125 of the Code of Criminal Procedure cannot be claimed from a married sister-in-law and her husband. As regards the applicant No.1 (stated to be mother-in-law) is concerned, her occupation is stated to be household and now orally it was stated that she is getting family pension from the

Government. There were no documents produced and also there is nothing on record to show that such pension was given to the applicant No.1. It appears that Rahul was serving as Talathi and after his death, the dispute have arisen in respect of the financial benefits. It also appears that present respondent No.2 has made an application for getting compassionate appointment. When present applicant No.1, who is 60 years old lady, has no independent source of income, has been made as respondent No.1, it cannot be said that the said application under Section 125 of the Code of Criminal Procedure was maintainable against any of the respondents. Maintenance under Section 125 of the Code of Criminal Procedure can be sought by a person against another who has refused to maintain his wife or his illegitimate or legitimate minor child, his father or mother. There is no provision, much less the interpretation of Section 125 of the Code of Criminal Procedure, by any stretch of imagination, would not give a right to a widowed daughter-in-law (even if we accept the present respondent No.2 as widowed daughter-in-law) to seek maintenance against father-in-law, mother-in-law or any of the other relatives of the husband. The learned Advocate appearing for the applicants, therefore, rightly relied on the decisions in *Ved Parkash Vs. Leena Kahar*, [1996 SCC OnLine P & H 194] and *Shaikh Masthan Sab Vs. Mallika Begum and others*, [2014 SCC OnLine Hyd.

1551], wherein the Punjab and Haryana High Court as well as Andhra Pradesh High Court have held that the widowed daughter-in-law is not entitled to get maintenance under Section 125 of the Code of Criminal Procedure.

10. With the abovesaid reasons, following order is passed :-

ORDER

- I) The application stands allowed.
- II) The order of issuance of notice dated 10.11.2021 passed in Criminal Miscellaneous Application No.586 of 2021 by learned Judicial Magistrate First Class, Sillod, Dist. Aurangabad and the entire proceeding in that matter, stand quashed and set aside.

[SMT. VIBHA KANKANWADI, J.]

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