

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

CRIMINAL WRIT PETITION NO.485 OF 2021

Rajubai wd/o Deepakrao Udawant
Age 57 years, Occu. Household,
R/o Near Natraj Mandir,
Juna Buldhana Road,
Chikhli, District Buldhana
At present R/o Veer Lahojinagar,
Gevrai, District Beed. ... **PETITIONER**

VERSUS

1. Amol s/o Deepakrao Udawant,
Age 40 years, Occu. Business
R/o Near Natraj Mandir,
Juna Buldhana Road,
Chikhli, District Buldhana
2. Vijay s/o Deepakrao Udawant,
Age 43 years, Occu. Business,
R/o as above. ... **RESPONDENTS**

.....
Mr. Saeed S. Shaikh, Advocate for petitioner
Mr. V.S. Kakade, Advocate holding for
Mr. B.K. Muley, Advocate for respondents
.....

CORAM : R. G. AVACHAT, J.

Date of reserving order : 16th February, 2022.

Date of pronouncing order : 23rd August, 2022.

ORDER :

The challenge in this Criminal Writ Petition is to
the order dated 2/3/2019, passed by learned Judicial

Magistrate, First Class, Georai, rejecting application, No.525/2015 for maintenance under Section 125 of the Code of Criminal Procedure, and the order dated 11/10/2019, passed by learned District Judge, Beed in Criminal Revision No.44/2019, confirming the order passed by learned Judicial Magistrate, First Class.

2. The petitioner claims to be a widow of Dipakrao Udawant. It is her case that, she had married late Dipakrao long back in a temple at Paithan, District Aurangabad. She was the first wife of late Dipakrao. Dipakrao cohabited with the petitioner at Chikhli. Matrimonial bickering started since late Dipakrao suspected petitioner's behaviour. The petitioner had no option but to take shelter at her parent's house at Georai. She thereafter moved an application under Section 125 of the Code of Criminal Procedure, Misc. Criminal Application No.185/2000 against her husband. The application was allowed, granting the petitioner maintenance of Rs.400/- per month. After the decision in Misc. Criminal Application No.185/2000, there was out of Court settlement between the petitioner and her husband – Dipakrao. Both of them started residing together at Chikhli. The deceased maintained the petitioner until he breathed his last. It is also the case of the petitioner that, late Dipakrao contracted

second marriage. The respondents are the children born of the second marriage. As such, the petitioner is the step mother of the respondents. On the demise of late Dipakrao, the respondents had maintained the petitioner for some time. After some time, the respondents stopped providing for the petitioner's maintenance. The petitioner, therefore, preferred application under Section 125 of the Code of Criminal Procedure.

3. The respondents resisted the application, denying all the averments in the application and urged for rejection thereof. The learned Magistrate was pleased to reject the said application for the following reasons :

16. The applicant stated in her evidence that she is legally married wife of father of non-applicants. She stated in her cross-examination that she married with the father of non-applicants on 19/04/1984. However, she had disclosed the age of non-applicant No.1 and 2 is 33 and 40 years in her application. This clearly indicates that before the alleged date of marriage between the father of non-applicants and applicant, the father of non-applicants was already married with the mother of non-applicants namely Usha.

17. The applicant also admitted in her cross-examination that her name is not recorded on the ration card of her husband. She is also not able to state that as to whether her name was recorded to the voter list of village Chikhali. It is also pertinent to note that the applicant stated in her evidence that

she had filed proceeding bearing Misc. Cri. Appln. No.185/2000 under section 125 of Code of Criminal Procedure for grant of maintenance against her husband. In the said proceeding on 11/10/2001 court has granted monthly maintenance of Rs.400/- in her favour. It is also her contention that after the said judgment her husband had entered into compromise with her and took her for cohabitation. However, record discloses that the said proceeding was proceeded ex parte against the father of non-applicants. It is also pertinent to note that the non-applicants stated in their say that their father was died on 17/10/2001 at Dhoot Hospital, Aurangabad while he was undergoing medical treatment. The applicant also admitted the said fact in her cross-examination. Therefore, the contention of applicant that after passing of judgment in Misc. Cri. Appln. No.185/2000 her husband entered into compromise with her and took her for cohabitation does not appears to be probable particularly when the said proceeding proceeded ex parte against him and he was died on 17/10/2001.”

The revisional Court affirmed the order rejecting the application for the very reasons.

4. The learned counsel for the petitioner would submit that, the petitioner had given her evidence on oath. Two witnesses were examined in proof of her marriage with the deceased. Some documents in the nature of receipt dated 19/4/1984 and some photographs of the petitioner with deceased Dipakrao along with both the respondents were placed on record. He would further submit that, the

proceedings of application under Section 125 of the Code of Criminal Procedure is summary in nature. The petitioner is childless destitute woman. The respondents being step sons, are, therefore, liable to provide for the petitioner's maintenance. The learned counsel for the petitioner has relied on the following authorities to ultimately urge for allowing the present Writ petition with grant of maintenance.

- (1) (Badshah s/o Amruta Godse Vs. Sau. Urmilla Badshah Godse & anr.)
Criminal Writ Petition No.144 of 2012
- (2) Badshah Vs. Sou. Urmila Badshah Godse & anr.
(Criminal misc. petition No.19530/2013 in
Special Leave Petition (Crl.) No.8596/2013)
- (3) Dr. Ravikumar s/o Gopalkishan Chetlawar & anr. Vs.
Smt. Radhabai Gopalkishan Chetlawar
(Criminal Application No.1486/2001)
- (4) Chanminiya (S) Vs. Virendra Kumar Singh Kushwaha
& anr. (S) [2011 SCC (1) 141]

5. Learned counsel for the respondents reiterated the reasons given by both the Courts for rejection of the petition. He has also relied on the judgment of the Apex Court in case of **Savitaben Somabhai Bhatiya Vs. State of Gujarat & ors.** reported in (2005) 3 SCC 636.

6. Considered the submissions advanced. Perused the evidence relied on and the citations referred to. The

jurisdiction of this Court under Article 227 of the Constitution of India is very limited. On appreciation of the evidence in the case, the learned Magistrate rejected the petitioner's application. The learned Additional Sessions Judge, in exercise of revisional jurisdiction, affirmed the said decision.

7. In case of Savitaben (supra), the Apex Court has observed :-

“Marriage of a woman in accordance with Hindu rites with a man having a living spouse is a complete nullity in the eye of the law – Such woman is therefore not entitled to the benefit of S. 125 Cr.P.C. or the Hindu Marriage Act, 1955 – Scope of S. 125 cannot be enlarged by introducing any artificial definition to include a woman not lawfully married in the expression “wife”. - Evidence showing that the respondent husband was having a living spouse at the time of alleged marriage with the appellant claimant– Thus, marriage with appellant was void – Appellant not entitled to maintenance – Plea that appellant was not informed about the respondent's earlier marriage when she married him, was of no avail.”

The Apex Court has affirmed this Court's order dated 28/2/2013, passed in Criminal Writ Petition No.144 of 2012.

8. In case of Dr. Ravikumar (supra), this Court had refused to interfere with the order granting interim

maintenance, directing step sons to pay the same to their childless step mother. The facts of the said case indicate that the petitioners therein had inherited the property from their father. The respondent therein had admittedly married to their father, but she was not their natural mother.

9. It pains this Court to dismiss the present Criminal Writ Petition. The learned Magistrate, on appreciation of the evidence, has observed the petitioner to have come with some false averments. According to her, after her application for maintenance against her husband was allowed, there was settlement between the two. Her husband took her back to her matrimonial home. He maintained her till he breathed his last. The respondents, her step sons, thereafter took her care. The evidence on record has disproved the claim of the petitioner. The application moved by the petitioner against her husband was decided ex parte on 11/10/2001 against her husband. There is evidence to indicate that, Dipakrao, so called husband of the petitioner, died just 10 days after the ex parte decision directing him to provide the petitioner maintenance. In the evidence itself the petitioner gave age/s of the respondents, indicating that they had already been born to their father while the petitioner allegedly married Dipakrao. Even if the marital tie between the petitioner and

Dipakrao is presumed, the respondents, being step sons of the petitioner, are not statutorily liable to make a provision for the petitioner's maintenance. Since both the Courts have negatived the claim of the petitioner, this Court finds no reason to interfere therewith, in exercise of writ jurisdiction. It is hoped that the respondents, if financially sound, may on their own provide a lumpsum for the petitioner's maintenance.

10. For the reasons hereinabove, the Criminal Writ Petition fails. It is dismissed.

**(R. G. AVACHAT)
JUDGE**

fmp/-