



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

23 CRIMINAL APPLICATION NO. 613 OF 2023

HEMLATA W/O. RAMPRASAD DABHADE

VERSUS

RAMPRASAD TUKARAMJI DABHADE

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Mr. Bhimrao R. Rathod h/for Mr. Bhise Sachin S, Advocate for
Applicant

Mr. A. R. Mule, Advocate for the Respondent.

CORAM : Y. G. KHOBRAGADE, J.

Dated : 7th October, 2024

JUDGMENT

1. With consent of both the counsels appearing for the
respective parties heard finally at the stage of the admission.

2. Having regard to rival submissions canvassed on
behalf of both the sides, I have gone through the record.

3. It is a case of the Applicant that, in the month of
August, 2010, her marriage solemnized with the Respondent at
Pandharpur Dist. Solapur. After the marriage, she cohabited with
the Respondent at her matrimonial house. She further alleged
that her husband-Non-applicant behaved with her properly for a
period of one year but subsequently she was illtreated and
mercilessly beaten under intoxication at the hands of her Husband

Non-applicant and also raised demand of dowry. Lastly, on 10.06.2010, the Respondent mercilessly beat her under the intoxicant state and driven her out of his house. Therefore, she was compelled to lodge a complaint for the offence u/s 498-A, 313, 323 of IPC. Since then, she is separately residing from her husband Non-applicant, but he failed to maintain her. Therefore, she instituted a proceeding bearing Cri. M. A. No. 444 of 2010 under Sec. 125 of Cri.P.C., alleging that, her husband Non-applicant is working as Assistant Engineer and drawing salary of Rs.40,000/- per month. Besides this, her husband having 37 Acres irrigated field and drawing income of Rs.6 lakhs per month. Therefore, she is entitled for monthly maintenance to the tune of Rs.5000/-.

4. The Non-applicant filed reply and resisted claim of the applicant. According to the Non-applicant there is no relationship exists being husband and wife between him and the Applicant. According to the Non-applicant, in the year 1988, his marriage solemnized with his wife Smt. Sumanbai and out said matrimonial relation, he blessed with two children i.e. son and daughter. He further alleged that, the Applicant is residing at Parbhani and she is keep of one Nagnath Aralkar. However, the applicant has

instituted the proceeding to extract money from him. Since the relation of husband and wife does not exists, the proceeding under Section 125 Cr.P.C., is not maintenance, hence, prayed for dismissal of the application.

5. In order to prove the claim, the Applicant examined herself at Exh. 24 and proved documentary evidence such as Exh. 28 Judgment and order in Sessions Case No. 147 of 2012, Exh.45 Judgment and order in Cri. M. A. No. 445 of 2012, Exh. 36 copy of Judgment and order in Criminal Appeal No. 52 of 2014, Exh. 44 Copy of Judgment and order in Criminal Revision Application No. 52 of 2014, Exh.50- copy of judgment and order in Criminal Appeal No.2 of 2002. On 09.02.2017, the learned JMFC, Court No.4, Parbhani passed the judgment and order and rejected the application under section 125 Cr.P.C., mainly on ground that, the applicant failed to establish relationship of husband and wife between her and the non-applicant.

6. Being aggrieved by said judgment and order, the applicant approached before the learned Session Judge under Sec. 397 of Cri.P.C., vide Cri. Rev. No. 50 of 2017. On 21.11.2022, the learned Revisional Court passed the impugned judgment and

order and affirmed findings of the learned Magistrate holding that the Applicant failed to establish relationship as husband and wife between herself and the non-applicant. Therefore, the applicant is before this Court under section 482 of Cri. P.C..

7. The learned counsel for the Applicant canvassed in vehemence that, the marriage between the Applicant and non-applicant solemnized in the month of August, 2000 and since then both of them cohabited together. So also, evidence of the P. W. 2 Shri Umrao Jadhav is in corroboration with testimony of the applicant, however, on 10-6-2010, the non-applicant beat her under intoxicant state and driven her out of her matrimonial house. However, both the courts below wrongly held that, the applicant failed to establish relations of husband and wife between her and the non-applicant. Therefore, prayed for quash and set aside both the judgments and orders.

8. Per contra, the learned counsel for the non-applicant supported findings of both the courts below and canvassed that, the non-applicant never married with the applicant and both of them never cohabited together at any time before and as such no relationship of husband and wife is exist. The Non-applicant

married with Smt. Sumanbai in the year 1988 and out said matrimonial relation, the non-applicant having son and daughter. Since the relations husband and wife does not exist, therefore, he is not liable to pay any maintenance.

9. Needless to say that, the applicant stated in her evidence affidavit that, in the month of August, 2000, her marriage solemnized with the non-applicant at Pandharpur Distt. Solapur and the relationship of husband and wife exists till date, however, on 10.06.2010, the non-applicant beat her under intoxicant state and drove her out of matrimonial house. So also, she lodged a complaint for the offence u/s 498-A, 313, 323 of IPC. In cross examination, the Applicant herself admitted that the marriage of non-applicant performed with one Sumanbai prior to 25 years and said marital relation still in existence. So also the Non-applicant blessed with one son out of said matrimonial relation. The son of the Non-applicant is aged about 24 years.

10. The P. W. 2 Shri Umrao Jadhav is a brother of the applicant, who deposed that in the month of August, 2000 the marriage between the applicant and non-applicant solemnized. After marriage, the non-applicant treated the applicant well but

subsequently subjected to cruelty. However, the applicant has not pleaded that, the P. W. 2 was present in marriage ceremony of the applicant. Whereas, evidence of the Non-applicant and defence witness proves that, marriage of the non-applicant solemnized with Smt. Sumanbai in the year 1988 and out said matrimonial relation, the non-applicant having son and daughter. The Applicant has not pleaded nor stated in her evidence affidavit that she and Non-applicant stayed together as husband and wife at the particular place.

11. Sec. 125 of Cri. P. C., provides duty of the husband to provide shelter and maintain his wife and minor children. Therefore, is necessary on the part of the applicant to first prove about existence of relation being a wife of the non-applicant and burden lies upon the applicant to establish that she is the legally wedded wife or that she has been divorced and has not been remarried.

12. In case of ***Mohan Ram-Vs-Badamo Devi, 1974 Cri. L.J. 227***, the Patana High Court held that, in order to prove eligibility to receive maintenance, the wife must establish that she is the legally married wife or that after her marriage she has been

divorced and has not remarried. The applicant has to prove that she is the wife of the opposite party or that the person is the legitimate or illegitimate child of such party. Once it has been so proved, the defence of the opposite party that he had another wife would require him to prove that the applicant was not his wife.

13. In case in hand, though the applicant examined herself and other witness but she failed to establish existence of husband and wife relations between her and the non-applicant. On consideration of evidence available on record, both the Courts below concurrently held that, the applicant failed to prove existence of “wife and husband” relations between the applicant and non-applicant. The applicant failed to bring any substantial material on record to prove that, the findings recorded by both the Courts below are perverse. Since, the Applicant failed to establish relationship as husband and wife, therefore, the Applicant is not entitled for the maintenance under Section 125 Cr.P.C.

14. In view of the above discussion, the Criminal application No. 613 of 2023 is dismissed.

(Y. G. KHOBRADE, J.)