



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

CRIMINAL WRIT PETITION NO.303 OF 2008

Ashok Dhondiba Halnor,
Age : 29 Years, Occu. Labour,
R/o 10, Mohari Post, Kharda,
Tq. Jamkhed, District Ahmednagar. ... **Petitioner.**

Versus

1. Rekha Ashok Halnor,
Age : 25 Years, Occu. Agri.,
R/o Naogaon, Rajuri,
Tq. & District Beed.
2. Ashwini @ Sarika Ashok Halnor,
Age : 5 Years,
U/G of respondent No.1. ... **Respondents.**

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Advocate for Petitioner : Mr. D. K. Dagadkhair.
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CORAM : S. G. MEHARE, J.
DATE : 07.08.2024

ORAL JUDGMENT :-

1. Heard the learned counsel for the petitioner.
2. The petitioner has impugned the order of the learned Chief Judicial Magistrate, Beed passed in Misc. Criminal Application No.131 of 2006, dated 04.12.2007 and the order of the learned Sessions Court, Beed passed in Criminal Revision No.7 of 2008, dated 14.03.2008.

3. The petitioner had a defence that the respondent was not his legally wedded wife and her child is also not legitimate. He also contended that he has a small piece of land having no sufficient income to provide separate maintenance. The learned Trial Court did not consider the circumstances. The burden was on the wife to prove that she was legally wedded wife. Both Courts did not consider the income source and granted heavy maintenance.

4. The learned counsel for the petitioner would submit that the wife must be legally married for entitling the maintenance under Section 125 of the Cr.PC. The evidence produced before the Court was not sufficient to inspire the confidence that the marriage was performed. There was no reason to perform the marriage secretly. The witnesses were not deposing or explaining any reason why the marriage was performed secretly.

5. Perused the findings on this point. Respondent No.2 has categorically deposed that she married the petitioner four years back as per their rights and rituals. Out of their wed lock, they were blessed with a baby girl. She also stated place of their marriage and the rituals performed by the clergyman. One witness was examined to corroborate her version. The

marriage cards were also printed. She led the *prima facie* evidence to believe that there was a marital tie with the applicant. As against this, when the onus shifted, the applicant did not produce a satisfactory evidence in rebuttal to believe that respondent No.1 was not legally wedded wife and the child is not legitimate.

6. As far as the income of the petitioner is concerned, the Court had discussed in detail. It has been observed that the burden was on the applicant to prove his exact income, but he did not produce. So evaluating the evidence, the Court neither believed the wife nor the husband and held that the petitioner was getting the income not less than Rs.1,50,000/- per annum. It was also observed that the petitioner was able to pay the separate maintenance and he has sufficient income source. Considering the living price of the then days, the Court granted Rs.1500/- to wife and Rs.1000/- to the child. The reasons does not show, it has been exaggerated and not properly appreciated. Similarly, the learned Sessions Judge has also considered the material.

7. Considering the material before the Court, the Court is of the view that neither the Trial Court nor the revisional Court erred in quantifying the maintenance and believing that the

marriage between the applicant and respondent No.1 was existing. The writ petition devoid of merits. Hence, stands dismissed.

8. Rule stands discharged.

9. No order as to costs.

10. R and P be returned to the Trial Court.

11. It is made clear that the right of the petitioner to file the declaratory suit about their relationship has not been taken away by this order.

(S. G. MEHARE, J.)

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vmk/-