



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

CRIMINAL WRIT PETITION NO. 640 OF 2021

Dnyaneshwar Magan Salunkhe
Age: 51 years, Occ : Service,
R/o Dhule Tal and District Dhule.

... **PETITIONER**

V/s.

1. The State of Maharashtra
Home Department
Mantralaya, Mumbai.
2. Mayabai Dnyaneshwar Salunkhe
Age : 51 years, Occ: Service
R/o Near Tahsil Godown,
Tal. Shirpur, District Dhule.

... **RESPONDENTS**

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Mr. M.R. Wagh, Advocate for the Petitioner
Ms. Chaitali Chaudhari Kutti, APP for the Respondent-State
Mr. Atmaram J. Patil, Advocate for the Respondents.
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CORAM : Y.G. KHOBRADE, J.
DATE : 04.02.2025

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of both sides heard finally at the admission stage.
2. The Petitioner has invoked jurisdiction of this Court under Article 226 and 227 of the Constitution of India and takes exception to the order dated

23.02.2021 passed by the Revisional Court in Cri. Rev. Appln. No.119/2014 and thereby directed the Petitioner to pay maintenance of Rs.2000/- per month to the Respondent/Wife from the date of application under Section 125 of the Cr.P.C. i.e. 07.02.2011. However, the prayer for enhancement of maintenance in respect of minor children/Applicant Nos.2 and 3 has been rejected.

3. The Petitioner is the Ori.Non-Applicant and the present Respondent No.2 is the Ori.Applicant No.1 in Misc. Criminal Application 938/2021. The name of Respondent Nos.3 and 4 was deleted from the array of Respondents/who are Ori. Applicant Nos.2 and 3. For the sake of brevity, I would like to refer parties to the present petition in their original capacity.

4. The Respondent/Wife filed a Misc. Criminal Application No.98/2011 under Section 125 of the Cr.P.C., before the JMFC, Shirpur and prayed for maintenance. She contended that on 25.04.1992, her marriage was solemnized with the Non-Applicant as per Hindu customs and rights. Out of matrimonial relations between her and Non-Applicant, the Applicant Nos.2 and 3 are born. She was initially treated well but subsequently she was subjected to domestic violence. The Non-Applicant was serving at Mumbai but he was frequently visiting her. She further alleged that due to assault at the hands of relatives of Non-Applicant she was hospitalized in the hospital of Dr. Raghuwanshi. Subsequently, her in-laws sent her at Mumbai to co-habit with

her husband Non-Applicant No.1. When she was carrying pregnancy of seven months, she was sent to her parental house at Wagra, Dist. Bharuch. However, during her stay at her parental house, the Non-Applicant sent various letters to give her mental torture. So also, the Non-Applicant was in adulterous relations with some other lady, hence, she tried to discontinue said adulterous relations of her husband but she was mercilessly beaten up by her Husband/Non-Applicant.

5. On 29.05.2010, the Non-Applicant beat her mercilessly and removed all her ornaments and drove her out of her matrimonial house. Therefore, she filed an application under Section 125 of the Cr.P.C., and prayed for maintenance for herself and for her minor children.

6. After service of summons, the Non-Applicant/Husband filed reply at Exh.11 and admitted the fact of solemnization of marriage with the Applicant. According to the Non-Applicant, on 04.11.1992 after completion of training he was serving in the Police Department and during said period, the Applicant was cohabiting with him. Shri Nana Dabhade, who was serving as Police Head Constable at Nagrani Police Station is the husband of elder sister of the Applicant. According to the Non-Applicant, the Applicant developed adulterous relations with the husband of her elder sister. In the year 2004, he got transferred at Pimpalner, Tq. Sakri and was staying in the tenanted

premises. During 2004 to 2018 he was staying with his Wife/Applicant with children at Pimpalner. At that time his elder daughter- Meenakshi who studied at Pimpalner in 6 to 9th Std., disclosed about adulterous relations between the Applicant and Shri Nana Dabhade, the husband of applicant's elder sister. Therefore, the Applicant is not entitled for the maintenance.

7. The Applicant filed evidence affidavit at Exh.37. The Applicant examined her daughter-Meenakshi as PW2 at Exh.39. The Non-Applicant/Husband filed evidence affidavit at Exh.34. The witnesses of each parties have undergone cross-examination conducted on behalf of the other sides.

8. On 12.08.2014, the learned JMFC passed the judgment and granted monthly maintenance of Rs.2,000/- to the Ori.Applicant Nos.2 and 3 (Minors) but declined to grant maintenance in favour of the Applicant/Wife. The learned JMFC held that on 11.04.2011, the Non-Applicant/Husband filed a proceeding under Section 13(1)(i) of the Hindu Marriage Act, 1955 and prayed for decree of dissolution of marriage. On 31.03.2012, the learned CJSD, Dhule passed judgment and decree and declared that the matrimonial relations between the Applicant/Wife and Non-Applicant/Husband would stand dissolved w.e.f. 25.04.1992 because of the Applicant/Wife being in adulterous relations. The Applicant/Wife has not challenged the judgment and decree of divorce.

9. The Applicant/Wife filed Criminal Revision Application No.119/2014 under Section 397 of the Cr.P.C., and challenged order dated 12.08.2014 to the extent of denial of maintenance to her. On 23.02.2021, the learned Revisional Court passed the impugned order holding that there is no evidence on record to suggest that the Wife is living in adultery. The Non-Applicant/Husband has neither seen the act of adultery nor has stated the exact date and time, hence, his bare words are not sufficient to prove that the Wife was living in adultery. Further, the statement of PW2-Meenakshi on oath appears to be when she was minor, hence, said statement cannot be believed. Therefore, considering existence of relationship of Husband and Wife as well as the appeal against the judgment and decree of divorce is pending. Therefore, the learned Revisional Court granted maintenance @ Rs.2,000/- per month in favour of the Applicant/Wife and directed the Non-Applicant/Husband to pay the same w.e.f. 07.02.2011.

10. Therefore, issue arises is that, when the decree of divorce is obtained by the Husband but questioned by the Wife before the Appellate Court can be a ground for denial of maintenance to the Wife ?

11. The learned counsel for the Petitioner placed reliance on the case of *M. Chinna Karuppasamy V/s. Kanimozhi; 2015-4 L.W. 553*, wherein, it is held that in view of Section 41 of the Indian Evidence Act, 1872, if once the

decree for divorce is granted on the ground of adultery, such finding is relevant for deciding the issue of adultery.

12. In the case in hand, it *prima facie* appears that on 07.02.2011, the Applicant/Wife has filed an application under Section 125 of the Cr.P.C., and prayed for maintenance for herself and for her minor children on the ground that on 29.05.2010, when the Non-Applicant told her on phone about visit at Shahada and when she was getting herself ready at that time, her parent in-laws visited and she was told to wash clothes but the Non-Applicant beat her mercilessly and removed her all ornaments and drove her out of her matrimonial house.

13. It is a matter of record that on 11.04.2011, Non-Applicant/Husband filed HMP No.126/2011 u/s 13(1)(i) of the Hindu Marriage Act for decree of dissolution of marriage subsequent to institution of application under Section 125 of the Cr.P.C.. It is apparent on face of record that the Non-Applicant/Husband prayed for decree of divorce on the ground that his Wife/Applicant is in adulterous relationship. As per judgment dated 31.03.2012 passed by the learned CJSD, it appears that the Non-Applicant/Wife appeared in the said matter but she has failed to file written statement, hence, it was proceeded *ex parte*. Ultimately, on 31.03.2012, the learned CJSD passed the judgment and decree in HMP No.136/2011 and dissolved the marriage

between the Applicant/Wife and the Non-Applicant/Husband w.e.f. 24.05.1992.

14. On 12.08.2014, the learned JMFC passed the judgment holding that as per judgment and decree dated 31.03.2012 passed by the learned CJSD, Dhule in HMP No.136/2011, the marriage between the Applicant/Wife and the Non-Applicant/Husband was dissolved w.e.f. 25.04.1992. Therefore, declined to grant maintenance in favour of the Applicant/Wife. However, the learned Revisional Court held that the decree of divorce came to be passed *ex parte* and was challenged by the Applicant/Wife by way of filing an appeal, which is pending. Therefore, the matrimonial relations between the Applicant/Wife and Non-Applicant/Husband are in existence.

15. As per explanation (b) to Section 125 of the Cr.P.C., “wife” includes a woman, who has been divorced by or has obtained a divorce from her Husband or has not remarried. It is not the case of the Petitioner/Husband that the Respondent No.2/Wife is remarried. Therefore, even otherwise in terms of clause (b) of Section 125 of the Cr.P.C., the Respondent/Wife is entitled for the maintenance. Therefore, I do not find that, the findings recorded by the learned Revisional Court is illegal, perverse, hence, no interference is called at the hands of this Court.

16. In view of above discussion, this petition deserves to be dismissed. Accordingly, it is dismissed. Rule is discharged.

[Y.G. KHOBRAGADE, J.]