



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

920 CRIMINAL WRIT PETITION NO. 869 OF 2024

Sayyad Layak S/o Sayyad Shadulla
Age: 38 years, Occu: Carpenter,
R/o. Jewla (B) Mandal Tanur, Dist. Nirmal,
Telangana State

....PETITIONER

VERSUS

1. Sayyad Nasrin W/o Sayyad Layak
Age: 36 years, Occu: Household,
2. Sayyad Afrin D/o Sayyad Layak
Age: 17 years, Occu: Education,
3. Sayyad Rimshanaj D/o Sayyad Layak
Age: 13 years, Occu: Education,
4. Sayyad Sad S/o Sayyad Layak
Age: 10 years, Occu: Education

....RESPONDENTS

....
Mr. Gaurav L. Deshpande, Advocate for the Petitioner
Ms. Nima R. Suryawanshi, Advocate for the Respondent No.1

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 20.02.2025

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. With consent of both the parties, heard finally at the stage of admission.

2. The Respondent Nos. 1 to 4 are the original Applicants i.e. wife and children, whereas, the Petitioner is the original Non-Applicant/husband in Cri. Misc. Appln. No.5 of 2019 instituted

u/s 125 of Cri. P. C.. For the sake of brevity, I would like to refer to the parties in their original capacity in the present Petition.

3. The Petitioner/husband invoked jurisdiction of this Court under Article 226 and 227 of the Constitution of India and takes exception to the Order dated 25.04.2024 passed by the learned Additional Sessions Judge, Bhokar, Dist. Nanded below Exh. 5 in Cri. Revision No. 13 of 2024, thereby declined to stay effect and operation of Judgment and order dated 3rd November, 2022 passed by the learned Judicial Magistrate First Class in Misc. Cri. Appln. 5 of 2019.

4. The Applicants filed Misc. Cri. Appln. No.5 of 2019 under Section 125 of Cr.P.C. and prayed for maintenance. According to the Applicants, the marriage between Applicant No.1 and the Non-Applicant was solemnized on 10.05.2007 as per Muslim Customs and Rites. After the marriage, the Applicant No.1 cohabited with the Non-Applicant-husband. Out of their matrimonial relations, the applicant Nos. 2 to 4 are blessed, who are school going children. According to the Applicant No.1/wife, the Non-Applicant-husband raised domestic violence and assaulted her under intoxication. On 18.10.2018, the Non-applicant/husband allegedly beat her mercilessly and drove her with her children Applicants Nos.2 to 4 out of her matrimonial house.

Since then, the Non-Applicant failed to maintain them. According to the Applicants, the Non-Applicant is earning more than ten lack rupees per year from agricultural income and drawing income of Rs.10,000/- to 15,000/- per month from his carpenter work. After the conclusion of the trial, on 03.11.2022, the learned Judicial Magistrate First Class, Umri, Dist. Nanded passed Judgment and directed the Petitioner/husband to pay monthly maintenance of Rs. 3,000/- per applicant till the children are attain the age of majority with cost of Rs. 10,000/-.

5. Being aggrieved by the said order, the Non-Applicant-husband filed Cri. Revision under Section 397 of Cr.P.C. before the learned Sessions Judge, Bhokar. The Non-Applicant also filed an application i.e. Exh- 05 and prayed for a stay on the effect and operation of the judgment and order dated 03.11.2022 passed by the learned JMFC, Umri. On 25.04.2024, the learned Additional Sessions Judge passed the impugned order and rejected Exh. 5 application for Stay, hence, this petition.

6. The learned counsel for the Petitioner fairly stated that, Respondent No.1-wife had filed Regular Civil Suit No.150 of 2023 and prayed for decree of dissolution of marriage under the Provisions

of Dissolution of Muslim Marriage Act, 1939. On 10.02.2025, the learned Civil Judge, Junior Division Umri, passed judgment and decree in RCC No.150 of 2023 and dissolved marriage between the Petitioner and Respondent No.1.

7. The learned counsel for the petitioner canvassed that, on 12.10.2023, the Respondent No.1-wife instituted RCS No.150 of 2023 and prayed for a decree of dissolution of marriage between her and the petitioner. The learned Civil Court passed a Judgment and decree in RCS No.150 of 2023, dissolving the marriage between the Petitioner and Respondent No.1 on 10.02.2025. Therefore, the Petitioner is not entitled to pay any maintenance to the Respondent No.1-wife from the date of institution of the suit i.e. from 12.10.2023.

8. It is further canvassed that, the Petitioner is doing carpentry work and drawing income of Rs.7,000/- to 8,000/- per month, however, the learned Trial court as well as the Revisional Court fail to consider monthly income of the Petitioner and directed the petitioner to pay Rs.3,000/- per month to per Applicant which comes to Rs.12,000/- per month, hence, it is exorbitant. Therefore, orders passed by both the Courts below are perverse, illegal and bad in law, hence, prayed for quashed and set aside the same.

9. Per contra, the learned counsel for the Respondents supported the findings recorded by both the Courts below. It is canvassed on behalf of the Respondents that, the learned Judicial Magistrate passed judgment and order dated 03.11.2022 after conclusion of trial holding that, the Petitioner has performed second marriage without consent of Respondent No.1-wife and maintaining the second wife, however, the Petitioner failed to maintain the Respondents. Therefore, considering prices of essential commodities and to meet daily needs, the learned trial court directed the present Petitioner to pay Rs. 3,000/- per month per Respondent until the children are attain the age majority is just and proper. The impugned order passed by the learned Additional Sessions Judge on 25.04.2024 refusing to stay the effect and operation of judgment dated 03.11.2022, is just and proper. Hence, the Respondents prayed for the dismissal of the Petition.

10. It is a matter of record that, the Respondents have filed a proceeding bearing No.05 of 2019 under Section 125 of Cr.PC and prayed for maintenance. After service of summons, the Non-Applicant-husband appeared and contested claim for maintenance. On 03.11.2022, the learned Judicial Magistrate passed judgment and directed the petitioner/husband to pay Rs. 3,000/- per month per

Respondent from the date of lodging of application u/s 125 of Cri. P. C.. The Petitioner/husband filed Cri. Rev. Appln. no. 13 of 2024 before the learned Revisional Court with Exh. 5, an Application for stay on the effect and operation of the judgment dated 03.11.2022 passed by the JMFC. On 25.04.2024, the learned Additional Sessions Judge, Bhokar, Dist. Nanded passed the impugned order below Exh. 5 in Cri. Revision No.13 of 2024 and declined to stay Judgment and order dated 3rd November, 2022 passed in Misc. Cri. Appln. 5 of 2019.

11. According to the Petitioner/husband, he is working as carpenter and his earning is Rs.100/- to 200/- per day. However, the Judicial Magistrate considered oral as well as documentary evidence and directed the Petitioner/husband to pay Rs.3,000/- per month per Respondent Nos. 1 to 4 i.e. total Rs.12,000/- per month from the date of Application but in respect of Respondent Nos.2 to 4 said maintenance is directed to be paid till attaining age of majority.

12. On 25.04.2024, the learned Additional Sessions Judge, Bhokar passed the impugned order holding that, even if it is considered that the Petitioner is a carpenter by profession and earning Rs.300/- to 400/- per day, besides this, the Petitioner possess agricultural land. Therefore, considering income of the present

Petitioner as well as the prices of essential commodities and the petitioner is maintaining his 2nd wife, the learned Revisional court refused to stay Judgment dated 03.11.2022 passed by the learned JMFC in Misc. Cri. Appln. No.5 of 2019. Therefore, I do not find any substantial ground to interfere with the findings recorded by the learned Revisional Court at this juncture. However, the Petitioner will have right to pursue the Revision before the Additional Sessions Judge.

13. Nonetheless, Respondent No.1-wife succeeded in obtaining decree of dissolution of marriage through the judgment and decree dated 10.02.2025, passed by the learned Civil Judge Junior Division, Umri, in RCS No.150 of 2023 whereby, the marriage between the Petitioner and Respondent No.1 was dissolved. Therefore, the Respondent No.1 would be entitled to receive maintenance from the date of institution of application u/s 125 of Cri. P. C., till the date of passing of decree of dissolution of marriage i.e., 10.02.2025. In view of above discussion, the present Criminal Writ Petition is dismissed. Accordingly, Rule is discharged.

[Y. G. KHOBRAGADE, J.]