



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 876 OF 2025

Venkatesh Narsingrao Udgirkar,
Age : 32 years, Occu : Self-employed,
R/o. Plot No. 4/2, Jilha Parishad Niwas,
Barshi Road, Taluka & District : Latur.

...PETITIONER

Versus

Snehlata Venkatesh Udgirkar,
Age : 26 years, Occu : Homemaker,
R/o. Harangul (Bk.,) Ta. & Dist. Latur

...RESPONDENT

Mr. Vishal Arjun Chavan, Advocate for the Petitioner.
Mr. Gundre Suraj V., Advocate for the Respondent.

CORAM : ABHAY J. MANTRI, J.
DATE : NOVEMBER 12, 2025

JUDGMENT :

1. Heard. **Rule.** Rule is made returnable forthwith and heard finally with the consent of the parties. Perused the impugned orders and record.

2. Petitioner / original respondent, being aggrieved by the judgment and order dated 08th May 2025 passed by learned Additional Sessions Judge – 3, Latur in Criminal Revision Petition No.18 of 2025, whereby confirmed the order passed by the In-charge Judicial Magistrate First Class, Latur in Criminal Miscellaneous Application No.175 of 2025, whereby allowed the application filed by the respondent herein for issuance

of search warrant against the petitioner, has preferred this petition.

3. At the outset, it is the contention of the learned counsel for the petitioner that both the Courts below failed to consider the provisions of law in their proper perspective and erred in passing the impugned orders. He further submitted that the application itself was not tenable under Section 100 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short “*BNSS*”), as there is a dispute between the parties about the custody of the child, and, therefore, it would not be proper for the learned Magistrate to invoke Section 100 of the BNSS. He also submitted that there exists a matrimonial dispute between the parties, and therefore, urged that the orders passed by the Courts below be set aside.

4. To buttress his submissions, he has relied upon the judgment of the Hon’ble Apex Court in *Ramesh Vs. Laxmi Bai (Smt)*, decisions of this Court in *Marotrao s/o Shamrao Pachare and others Vs. Usha Marotrao Pachare, Vishal Jivan Jogure Vs. Smt. Megha Vishal Jogure and another*, Judgment of Orissa High Court in *Yudhistir Mohanand Vs. Dalimba Mohanand*, judgment of the Himachal Pradesh H.C. in *Shri Ankush Thakur, s/o Sh. Vir Singh Thakur and others Vs. State of Himachal Pradesh and others* and judgment of the Rajasthan High Court in *Giriraj Singh s/o Indra Dan Vs. State of Rajasthan and Anr.*, He submitted that in view of the law laid down in the judgments above, the order passed by the learned Magistrate is illegal, and, therefore, he prayed for setting aside the same.

5. On the other hand, Mr. Gundre, learned counsel appearing for the respondent, vehemently contended that the orders passed by the learned Courts are just and proper, and no interference is required. He drew my attention to paragraph Nos. 19 and 20 of the order passed by the learned Additional Sessions Judge and paragraph No.9 of the order passed by the learned Magistrate, and urged that the learned Magistrate has committed no illegality or perversity. Accordingly, he urged that the petition be dismissed.

6. On perusal of the record, at the outset, it appears that undisputedly, the child was in the custody of the mother, and on the day of the incident, the father forcibly took the child with him. Consequently, the respondent lodged a complaint against the petitioner and also filed an application under Section 100 of BNSS. Considering these facts, the learned Magistrate passed the order, thereby allowing the respondent's application and granting permission to issue a search warrant against the petitioner. In paragraph No.9, the learned Magistrate has observed as under:

“9. The general principle in matters relating to the custody of a minor is well settled that the paramount consideration is the welfare of the minor and not the legal right of this or that party. A minor who has not completed the age of 5 years shall ordinarily be with the mother. In this case, the minor is 2 years old. Taking into consideration the material on record, at present, he is a tender age and the feeding child of the applicant. He requires the care and protection of his mother. He cannot live without his mother. Removing a child who is dependent on his mother for the sake of nutrition is a prima facie wrongful act that amounts

to wrongful confinement by a non-applicant. In particular circumstances of his case, considering the very small age of the children, keeping away from the approach of the mother would amount to wrongful confinement. Therefore, the act of a non-applicant amounts to wrongful confinement.”

7. Similarly, I have perused the impugned judgment and order passed by the learned Additional Sessions Judge. On perusal of the same, it appears that the learned Sessions Judge, after considering the material on record and considering the judgments relied upon by the learned counsel for the petitioner, dismissed the revision, holding that the learned Magistrate, in paragraph No.9, had duly considered the facts of the case and rightly passed the order. I would like to reproduce paragraphs Nos. 19 and 20 of the said judgment, which read as under :

“19. The facts in the above-discussed cases and the facts of the case at hand are different. In the above-discussed cases, the child was/were not breastfed. Further, they were in the custody of their father at the time of leaving the matrimonial house by the wife. ***But, in the case at hand, the minor child was 2 years old at the time it was taken away by the revision petitioner, and he was living with his mother.***

20. The Ld. Trial Court has considered all the factual aspects and specifically observed in para No.9 of the order that, minor is of 2 years, he is of tender age and feeding child of the applicant (mother), he require care and protection of the mother, he can not live without his mother, removing child who is depend on his mother for the sake of nutrition is prima facie wrongful act which amount to wrongful confinement.”

8. Thus, it appears that the child is two years old, and according to the allegations in the application, the father forcibly took him away. Consequently, the respondent filed the application, and, in accordance with Section 100 of BNSS, the learned Magistrate has issued a search warrant. As there is a matrimonial dispute between the parties, the appropriate remedy would have been to file the application under the Guardians and Wards Act, 1980.

9. Having considered the said fact, I do not find any illegality or perversity in the impugned orders.

10. I have perused all judgments relied upon by the learned counsel for the petitioner. In none of the matters was the child's custody with the mother; on the contrary, it appears that in all the matters, the child's custody was with the father. Therefore, in my view, the observations made in those judgments are of hardly any assistance to the petitioner in substantiating his claim in the writ jurisdiction.

11. Thus, considering the above discussion, I do not find any merit in the petition. On the contrary, it appears that the petitioner forcibly took the child with him from the custody of the mother and thereby deprived the minor child of her mother. Therefore, the petitioner is liable to pay the costs.

12. As a result, the petition being bereft of merit, stands dismissed with costs of ₹ 10,000/-. The petitioner is directed to deposit the said

amount before the Learned Magistrate within ten weeks, failing which the learned Magistrate shall take appropriate steps to recover the same. On deposit/ recovery of the said amount, it shall be paid to the respondent, i.e. the original complainant.

13. Rule is discharged accordingly.

(ABHAY J. MANTRI, J.)