



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 392 OF 2024

Rajesh S/o. Sitaram Chavhan,
Aged about 44 years, Occ.– Nil,
R/o. C/o. Katurabai Kisan Rathod,
Indira Nagar, Khamgaon,
Tah. Khamgaon, Dist. Buldhana.

.... **PETITIONER**

// **VERSUS** //

Pratibha W/o. Rajesh Chavhan,
Aged about 30 years, Occ.-Tailor work,
R/o. C/o. Fulsing Motiram Jadhao,
Kapuswadi, Tah. Jamner,
District – Jalgaon (Khandesh)

.... **RESPONDENT**

Mr. A. M. Tirukh, Advocate for the Petitioner.
Ms. Aarti Singh, Advocate (Appointed) for Respondent.

CORAM : SMT. M.S. JAWALKAR, J.

DATE ON RESERVING THE JUDGMENT : **30.01.2025.**
DATE ON PRONOUNCING THE JUDGMENT : **05.02.2025.**

JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties.
2. The present petition is filed by the husband challenging the order dated 13.10.2023, passed in Hindu Marriage Petition No.64/2019 by the Civil Judge, Senior Division, Khamgaon, below Exhibit-20 the application under Section 24 of the Hindu Marriage Act, 1955 (for the sake of brevity “HM Act”).

3. The petitioner filed Hindu Marriage Petition No.64/2019 against the respondent wife for declaring their alleged marriage dated 08.01.2013 as null and void, since the earlier marriage of respondent with one Ganesh Rathod was in existence on the date of their marriage. On 01.09.2022, the respondent filed an application under Section 24 of the HM Act for interim maintenance below Exhibit-20 and prayed for maintenance of Rs.10,000/- per month. The petitioner filed his reply to the application under Section 24 of the HM Act. It is his contention in reply that the complaint filed under the Protection of Women from Domestic Violence Act, 2005 (for the sake of brevity “PWDV Act”) No.31/2021, which came to be dismissed by the learned Judicial Magistrate, First Class, Jamner. Similarly, Misc. Criminal Application No.157/2021 filed by the respondent under Section 125 of the Code of Criminal Procedure, 1973 (for the sake of brevity “Cr.P.C.”) also came to be dismissed on the ground that the respondent is not the legally wedded wife of the petitioner since her earlier marriage had not been dissolved by decree of divorce.

4. The learned Trial Court partly allowed the application filed under Section 24 of the HM Act and granted interim maintenance of Rs.3,000/- per month along with payment of Rs.1,000/- towards the costs of application. It is contended that this order came to be passed without considering the Judgments and Orders passed in proceedings

under the PWDV Act and under Section 125 of the Cr.P.C. on the ground that respondent is not legally wedded wife of the petitioner. It is submitted that learned lower Court ought to have rejected the application for interim maintenance and costs of litigation.

5. The learned Counsel for the petitioner relied on the Judgment passed by the Hon'ble Apex Court in the case of ***K. G. Premshankar Vs. Inspector of Police and Anr.***, reported in ***(2002) 8 SCC 87***.

6. In reply, the learned Counsel for the respondent submitted that there is no error or perversity in the order granting interim maintenance and it needs no interference.

7. I have heard the learned Counsel for the petitioner and learned Counsel for the respondent. Perused the impugned order and documents on record as well as considered citation relied on. For the sake of convenience, Section 24 of the HM Act is reproduced as under :

“24. Maintenance pendente lite and expenses of proceedings.—Where in any proceeding under this Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own

income and the income of the respondent, it may seem to the Court to be reasonable.

[Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.]”

8. On perusal of Section 24 of the HM Act, it is clear that either wife or husband has no source of income and they are unable to proceed with the matter due to their economic condition, the Court can pass the order of maintenance and the expenses of the proceeding. The basic ground raised by the petitioner herein and before the learned Trial Court also is the same that proceedings under Section 125 of the Cr.P.C. and under the PWDV Act, maintenance amount was not granted holding that marriage is null and void. However, the petition itself is filed for declaration of marriage as null and void, it means there is a marriage between the petitioner and respondent and to come to the conclusion that marriage is in nullity or not, there has to be examination of substantial evidence. It is settled position of law that even in the proceedings of declaration of nullity of marriage, the respondent is entitled for maintenance and litigation expenses, if other conditions are satisfied for grant of maintenance.

9. While dealing with the application under Section 24 of the HM Act, it has to be looked into whether party claiming maintenance

has no source of income and is unable to proceed with the matter. The Court can pass the order of maintenance considering the economic condition and earning sources of parties and dependency etc. The applicant claiming maintenance in the petition for nullity to defend her effectively, eligible to claim interim maintenance until the final adjudication about the validity of her marriage. If such order of interim maintenance of the spouse having no source of income is rejected, it amounts to violation of principle of natural justice or denial to defend her case. In the case of ***K. G. Premshankar Vs. Inspector of Police***, cited above, wherein in para 30 held as under :

“What emerges from the aforesaid discussion is (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of res-judicata may apply; (3) in a criminal case, Section 300 Cr.PC. makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil Court would be relevant if conditions of any of the Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.”

10. The learned Counsel for the petitioner also drawn my attention to the Sections 41 and 42 of the Indian Evidence Act, 1872. For the sake of convenience, Sections 41 and 42 reproduced as under :

“41. Relevancy of certain judgments in probate, etc., jurisdiction.—A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment 1[order or decree] declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, 1[order or decree] declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, 1[order or decree] declares that it had been or should be his property.

42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.
— Judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists”

11. Section 41 of the Indian Evidence Act relates to the relevancy of certain judgments and its effect. Section 42 is in relation to the relevancy and effect of judgment, order or decree other than those mentioned in Section 41. Section 41 is in respect of final judgment, order or decree of a Competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction which confers upon or takes away from any person any legal character. This section further states that said judgment, order or decree is conclusive to any legal character which it confers accrued at the time when such judgment, order or decree came into operation and some other contingency which given in Section 41.

12. As such, it is crystal clear that the judgment, order and decree has to be passed by the “Competent Court” to hold it as conclusive proof. The Criminal Court exercising its jurisdiction under Section 125 of the Cr.PC. or under the provisions of PWDV Act, they are dealing with only question of maintenance or interim protection.

They are not competent to grant any declaration as claimed by the petitioner herein for declaring that marriage is null and void. As such, if it is observed in the judgment in criminal proceedings, the marriage is in the nature of nullity and, therefore, the petitioner is not entitled for maintenance will not affect her right to defend in the petition filed before the “Competent Court”, for such declaration her admission may be relevant in the proceeding for nullity of marriage.

13. As such, the ground raised by the petitioner that Application under Section 24 of the HM Act liable to be dismissed in view of the judgment and order passed in proceedings under Section PWDV Act and Section 125 of the Cr.P.C. cannot sustain. As such, the Writ Petition stands **dismissed** with costs of **Rs.5,000/-** (Rs. Five Thousand only), to be paid to the respondent wife within a period of two weeks.

14. Fees of learned Counsel appointed for the respondent be quantified and paid as per Rule.

15. At this juncture, learned Counsel for the petitioner requests to expedite the matter. The learned Civil Judge Senior Division, is hereby directed to dispose of the matter as early as possible, subject to

deposit of arrears of maintenance and costs of litigation, by the petitioner.

The Writ Petition stands disposed of in the above terms.

(SMT. M.S. JAWALKAR, J.)

Kirtak