

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 5904 OF 2024

Sharique Ahmad Mohammad Waris Momin ...Petitioner
Vs.
State of Maharashtra & Ors. ...Respondents

Mr. Shrikant Rathi for the Petitioner.
Mr. F. N. Momin for the Respondent No. 2.
Ms Manisha R. Tidke, APP for the Respondent-State

CORAM : M. M. SATHAYE, J.

DATED : 12th JUNE 2026

PC.:

1. Heard learned counsel parties and perused the record.
2. By this petition under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code, 1973 ('Cr.PC' for short), the Petitioner is seeking a writ to quash Criminal Misc. Application No. 33 of 2020 pending before 11th Court, Judicial Magistrate, First Class, Bhiwandi. The said Criminal proceedings are filed by the Respondent Nos. 2 and 3 under section 125 of the Cr.P.C. contending *inter alia* that the Respondent No. 2 is legally wedded wife of the Petitioner and the Respondent Nos. 3 is a daughter born from the said wedlock.
3. Respondent No. 2 has contended, in her application that the Petitioner is a husband of the Respondent No. 2, who alongwith his family members treated the Respondent No. 2 with cruelty, subjecting her to physical and mental torture and verbal abuse. It is contended that the Petitioner and her

family members demanded money and articles such as washing machine from the Respondent No. 2. It is contended that the Respondent No. 2 has been assaulted. It is the contention of the Respondent No. 2 that the Petitioner refused to take the responsibility of the unborn child and refused to keep the Respondent No. 2 with him, with a threat of dire consequences when abortion of unborn child was insisted. It is contended that the Petitioner is having extra marital affair. It is also contended that the Respondent No. 2 was refused medical treatment. It is further contended that the jewelry and gold ornaments of the Respondent No. 2 are in possession of the Petitioner. By specifically contending that on 25.08.2020, the Petitioner and her family members prepared one paper and took forcible signature of the Respondent No. 2 by pressing her neck and the Respondent No. 2 was made to sign the paper. It is contended that then the Petitioner took their daughter in the custody and left Respondent No. 2 at her house by giving triple talaq. On such averments, application is filed seeking maintenance of Rs.15,000/- for the Respondent No. 2 – wife and Rs.5,000/- for the Respondent No. 3 - daughter.

4. The Petitioner filed an application below Exh. 11 seeking dismissal of the main Application u/s. 125 of the Cr.P.C. That Application has been rejected by the learned Magistrate (11th Jt. C.J.J.D and J.M.F.C., Bhiwadi) by order dated 02.08.2024. After rejection of this Application, present Writ Petition is filed seeking almost same grounds, ultimately praying that the maintenance proceedings to be quashed. In essence the order dated 02.08.2024 is challenged.

5. Learned Counsel for the Petitioner submitted that there has been a divorce between the parties, which was initiated by the Respondent No. 2-

wife herself by seeking *Khula* before the concerned *Kazi*. The document dated 25.08.2020 is relied upon contending that both the parties on their own will are separated. Another notarized document of divorce by mutual consent or *Khula-nama* dated 07.09.2020 is relied upon. It is contended by the learned Counsel for the Petitioner – husband that parties have divorced by mutual consent and settled dispute about custody of child and iddat amount is also paid. He submitted that in view of this document, it is clear that the Respondent No. 2-wife, is living separately by mutual consent, thereby dis-entitling her from claiming maintenance. Section 125(4) of the Cr.P.C. is specifically relied upon. He also relied upon the judgment of **Vitthal Hiraji Jadhav vs. Harnabai Vitthal Jadhav and Another 2003 (4) Mh.L.J. 23** in support of his case where, under similar circumstances a document indicating mutual consent to live separately was relied upon and this Court had quashed the proceedings u/s. 125 of the Cr.P.C.

6. On the other hand, learned Counsel for the Respondent Nos. 2 and 3 (wife and daughter) contended that the notarized document of divorce by mutual consent nowhere indicates that parties are living separately or that the wife has consented for separate living. He further contended that the alleged *Khula* dated 25.08.2020 is a document seriously challenged by the Respondent No. 2 – wife, which is clear from para 16 of her Application before the Magistrate. He submitted that the said document of *Khula* dated 25.08.2020 is a product of signature taken by force under coercion and therefore cannot be believed. He submitted that assuming that there is a divorce between the parties, muslim woman is held entitled to the maintenance u/s. 125 of the Cr.P.C and relied upon the judgment of **Mohd. Abdul Samad vs. the State of Telangana & Anr.** reported in **2024 INSC 506**. He submitted that since *Khula* is seriously challenged by the Respondent No.

2-wife, whether there is a divorce in accordance with law is a matter of decision by the Court of competent jurisdiction and cannot be decided in the writ jurisdiction.

7. I have carefully considered the submissions and perused the records.

8. At the outset, it is necessary to note that the whole argument of the learned Counsel for the Petitioner-husband is based on Section 125(4) which dis-entitles the wife from receiving maintenance under the said section, if the parties are living separately by mutual consent.

9. In this respect, two things need to be noted. Firstly, the notarized document of Khula-nama does not have any recital that the parties are living separately by consent. Khula certificate issued by Kazi dated 25.08.2020 is under serious challenge by the Respondent No. 2-wife, which is pleaded under paragraph 16 of the Application. Second aspect that needs mention, is that, the averments in the Application regarding physical and mental abuse and the manner in which the Respondent No. 2-wife is allegedly treated, clearly suggests that even if Respondent No. 2 is residing separately, the same cannot be said to be of her own free will or consent as such.

10. In that view of the matter, it cannot be said that the Respondent No. 2-wife is living separately by mutual consent. Therefore bar under Section 125(4) of Cr.P.C. would not apply to the facts of the case. In these peculiar facts and circumstances, the judgment relied upon by the learned Counsel for the Petitioner in **Vitthal Hiraji Jadhav (Supra)** would not advance the Petitioner's case, in principle, because facts of this case are found to be completely distinguishable.

11. In the aforesaid facts and circumstances, the bar to entitlement of the

Respondent No. 2 u/s. 125 of the Cr.PC needs no further consideration as she is not found to be residing separately by consent.

12. The proceedings are pending before the Magistrate and not yet decided on its own merits. Therefore this Court is refraining from commenting any further. Suffice to observe that in the facts and circumstances narrated and for reasons indicated above, this is not a fit case for quashing section 125 Cr.PC. proceedings as prayed by the Petitioner.

13. **The Petition is accordingly dismissed.** No order as to the costs.

14. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)