

MHNG150000452018



Presented on : 10/01/2018

Registered on : 10/01/2018

Decided on : 15/01/2021

Duration : 3 years, 5 days

IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, HINGNA
(Presided over by Shri. N.K. Meshram)

Cri. M.A. No.01/2018.

Exh.43.

1. Sau. Durga W/o. Dayashankar Khursange,
Age : 23 yrs., Occ. Nil,
2. Rudra alias Daksga S/o. Dayashankar Khursange,
Age : 4 yrs., Occ. Nil,
3. Ku. Sanjana D/o. Dayashankar Khursange,
Age : 5 yrs.,
Both No.2 & 3 being minor
through their natural guardian
mother applicant no. 1,
All R/o. Ward No.1, Mondha (Gotali),
Tah. Hingna, Dist. Nagpur. **Applicants.**

....Versus....

Dayashankar S/o. Ratanji Khursange,
Age : 26 yrs, Occ. Private Service,
R/o. Ward No.1, Mondha (Gotali)
Tah. Hingna, Dist. Nagpur.
(Native Place – Navejhari, Ward No.1,
Post Murmari, Tah. Tiroda, Dist. Gondia)

.... Non applicant

Counsel for the Applicants :- Adv. Smt. K.S. Karmarkar

Counsel for Non applicant :- Adv. Shri. D.A. Golhar

J U D G M E N T

(Delivered on this 15th day of January, 2021)

This is an application under section 125 of the Code of Criminal Procedure, 1973 for grant of maintenance to the applicant no.1 to 3 claiming the wife and children respectively of the non-applicant.

2] In brief, applicant's case is that, the applicant no. 1 Durga is the wife of non-applicant no.1 Dayashankar. Applicant no.2 and 3 are son and daughter of the applicant no.1 and non-applicant. The marriage of the applicant no.1 was solemnized on 06/10/2013 at her parental residential place at Mondha with the non-applicant as per the customs privileging in the society. Out of wedlock, applicant no.2 and 3 are the children of the applicant no. 1 and non-applicant. There was love affairs between the non-applicant and applicant no.1 prior to marriage and thereafter culminated in settled marriage. At the time of marriage, the applicant no.1 has 6 months baby as there was physical relations between the applicant no. 1 and non-applicant prior to the marriage. After marriage of the applicant no. 1, she joined the family of non-applicant. The mother of the non-applicant started ill treating the applicant no. 1 as his mother was against their marriage since beginning. The mother in law of applicant no.1 was not allowing

applicant no.1 to prepare food for the family. She was also doubting on the character of applicant no.1. The mother of the non-applicant was also poisoning to the mother of applicant against the applicant no.1. The non-applicant used to beat the applicant no.1 mercilessly. The non-applicant had also tried to strangle the applicant no.1 while she was carrying seven months pregnancy. Therefore, she became unconscious. Therefore, she was admitted in the hospital. It is further submitted by the applicant that the land of applicant no.1 grandfather was acquired by the Government and granted compensation. This fact was known to the mother of the non-applicant. Therefore, she again started ill treatment on the ground that her parent has not given sufficient dowry. Therefore, started to harass the applicant no.1 for demand of dowry. The mother of the non-applicant always used to ill treat on various petty reasons. She was not allowing her to enter into the house and she threw all belongings of the applicant no.1 out of the house. At that time, she made complaint to the Panchayat of village and before Panchayat, non-applicant asked in writing that if any untoward incident occurred in the family the applicant no. 1 shall be held responsible. Therefore, applicant no. 1 also demanded assurance to the non-applicant in writing. However, non-applicant flatly refused to give any statement in writing. Under these circumstance, the applicant no. 1 went back to the parental house, where she delivered applicant no.2. The non-applicant without giving any information and without consent, contacted with another lady on 22/08/2017. Therefore, she lodged

report with Police Station Hingna. The non-applicant never provided single pie after separation. Inspite of his legal as well as moral obligations, he deliberately refused to pay maintenance amount to the applicants. He has sufficient source of income. He is serving in High Tech Pvt. Ltd. Company. In addition to this private service, he earns Rs.50,000/- to Rs.70,000/- per year from agricultural income. The non-applicant deliberately refused to pay the maintenance inspite of sufficient means of income. Therefore, she prayed amount of Rs.4000/- for herself and Rs.3000/- to each applicant.

3] The non-applicant has filed composite reply at Exh.06. That reply subsequently amended as the applicant no. 1 has made amendment in the main application. He has flatly refused of getting married with applicant no.1. He has further submitted that he never enters into the marriage with applicant no.1. He has also denied the paternity of applicant no. 2 and 3. The non-applicant had no access to the applicant as there was no any marriage ceremony performed as per customs which govern parties. Moreover, the document which is filed on record are fabricated and false. Therefore, he had lodged the report against the applicant no.1, which is under inquiry. In his specific submission, it is submitted that the applicant no.1 has no right to file this application as she want to cheat him dishonestly and fraudulently. Therefore, she is not entitled to claim any maintenance as the non-applicant failed to prove the legal marriage. His parents never tortured the applicant. The non-applicant is not doing any

service. He does labour work. He has to maintain the old age parents depend on him. Therefore, she is not entitled for any kind of maintenance.

4] On rival submissions made by the applicant and respondent, the following points arose for my determination and I have recorded my findings thereon for the reasons discussed as under :-

	<u>Points</u>	<u>Findings</u>
1]	Whether applicant no. 1 is the legally wedded wife of non-applicant ?	... <u>In affirmative.</u>
2]	Do applicants prove that non-applicant has neglected or refused to maintain them ?	... <u>In affirmative.</u>
3]	Do applicants prove that non-applicant is having sufficient means to pay maintenance?	... <u>In affirmative.</u>
4]	Whether applicants are entitled for maintenance?	...Yes.
5]	What order ?	... <u>As per final order below.</u>

R E A S O N S

5] Heard learned Adv. Mrs. K.S. Karmarkar for the applicant and learned Adv. Shri. D.A. Golhar for non applicant at length.

AS TO POINT NOS. 1 TO 3 :

6] The applicant to prove her case, she entered into witness box vide Exh.17. She reiterated the contention of her application and

submitted that her marriage was solemnized on 06/10/2013 at her paternal place at Mondha. However, this fact is strongly denied by the non-applicant. The non-applicant deposed during his chief examination that he has not married with applicant no.1 and no ceremony was performed. He denied relationship with the applicant. Now, the question is, whether applicant no.1 has prove that she is legally wedded wife of non-applicant or not ? She relied on the marriage card, it is marked at Exh.78, from which it prima facie reveals that the marriage was solemnized on 06/10/2013 at Mondha in the house of Pundlikrao Parteki. However, the non-applicant raised an objection regarding the invitation card and alleged that this is the false and fabricated document. There is no name of printer from which the card is printed by the applicant no.1.

7] It is also alleged that he has lodged the report against applicant no.1 for making this false document. Said report was lodged on 06/04/2018. The non-applicant also denied the relationship with applicant no.2 and 3. He relied on the following judgments,

Hon'ble Apex Court in the matter of **Bhaurao Shankar Lokhande and other Vs. State of Maharashtra, reported in 1965 Mh.L.J. 561 S.C.**, in which it was held that “ Unless marriage is celebrated or performed with proper ceremony and due for it cannot be said to be solemnized. Merely going to settled ceremonies with intention that the parties be taken to be married will not make

ceremonies prescribed by law or approved by the established customs.”

8] Hon'ble Apex Court in the matter of **Surjit Kaur Vs. Garja Singh and others, reported in AIR 1994 S.C. 135**, in which it was observed that “ Mere living together as husband and wife that by itself would not confer the status of husband and wife. It has to be brought on record that nature of ceremonies performed. ”

9] Hon'ble Orisa High Court Court in the matter of **Bhabagrahi Samantaray Vs. Satyabhama Swain, reported in 2004 Crime 368 Orissa**, in which it was observed that “ In a proceeding under Section 125 of Code of Criminal Procedure, strict proof of marriage as required in civil proceeding is not necessary. However, when the marriage is in dispute, some evidence must be laid by the wife to show that some rechuals of marriage had been performed. ”

10] Hon'ble Orisa High Court Court in the matter of **Kshitish Chandra Mishra Vs. Smt. Sara Sahu and others, reported in 1996 Cr.L.J. 2235 Orissa**, in which it was observed that “ Uncorroborated statement of wife as to fact of marriage to petitioner cannot be believed. Therefore, maintenance cannot be granted. ”

11] Hon'ble High Court Court in the matter of **Bama Kathari Patil Vs. Rohidas Arjun Madhavi and others, reported in 2004 (2)**

Mh.L.J. 752, in which it was observed that “ Exhibiting of a document is an administrative act, which is produce in court is ordinarily exhibited only after its proof. It does not mean that the document is proved and non exhibiting a document does not mean that the document is not proved. A document is required to be proved in accordance with the provision of the Indian Evidence Act. ”

12] Hon'ble High Court Court in the matter of **Shrawan Nathu Kannuar Vs. Anjunanabai Shrawan Kannuar and anothers, reported in 1996 (2) Mh.L.J. 483**, in which it was observed that “ Mere production of document kept in police custody will not be a proof of as public document unless the officer, who recorded the statement is called for and examine those document cannot be said to be proved when the person, whose recorded the statement is very much alive. ”

13] Hon'ble High Court Court in the matter of **Smt. Parameshwari Bai Vs. Muthojirao Scindia, reported in AIR 1981 Karnataka 40 Plastum(E)**, in which it was observed that “ The man and woman leaved as a husband and wife for fairly long time and not in a state of concubinage. Presumption is both with regard to factum of marriage and legality of it. It is a strong presumption as it goes to the structure of the society and the person who challenge it will have to rebut it by clear, cogent and satisfactory reason. This burden is heavy on them. ”

14] Hon'ble Bombay High Court Court in the matter of **Sangitabai @ Jyoti W/o. Sandeep Damodhar Vs. Sandip S/o. Sadashiv Damodhar**, reported in 2015 ALL MR (cri) 2626 Bom., in which it was observed that “ When husband denies the fact of marriage, it is not expectation from the court to make detailed inquiry about the validity of marriage. However, applicant is required to establish that she is wife of the person, from whom she is claiming maintenance.”

15] Hon'ble Bombay High Court Court in the matter of **Rajdhar Shivdas Koli Vs. Sau. Khatubai @ Laxmibai Rajdhar Koli**, reported in 2017 ALL MR (cri) 733 Bom., in which it was observed that “ In view of Section 7 of Hindu Marriage Act, to make marriage complete and binding it has to be solemnized in accordance with the Customary rights and ceremony of either party including *Saptapadi*. No case of wife that any such custom is prevailing in their community to perform marriage. In absence of marriage of any parties the wife is not entitled for maintenance. ”

16] Hon'ble Apex High Court Court in the matter of **Ahmed Saheb (dead) by LR's and others Vs. Sayed Ismail**, reported in 2012 (6) Mh.L.J. 503 S.C., in which it was observed that “ Where the parties admission of party in the proceeding either in the pleading or oral binds the party. It does not require any further corroboration. ”

17] Applicants relied on following citations,

(i) **Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit and anothers, reported in (1999) 7 Supreme Court Cases 675**, in which it was held that “it is not necessary to prove that marriage procedure was complete as per relevant rites. The standard of proof is where claimant establish that she and alleged husband lived together as husband and wife, held a rebuttable presumption arises that they are legally married. The husband cannot contain in Section 125 proceeding that there was no valid marriage because essential rites were not performed.

(ii) **Pyla Mutyalamma alias Satyavathi Vs. Pyla Suri Demudu and another, reported in (2011) 12 Supreme Court Cases 189**, it was held by Hon'ble Apex Court that “ Validity of marriage cannot be ground for refusal of maintenance if other requirement of Section 125 of Cr.P.C. are fulfilled, the nature of proof of marriage required for a proceeding under Section 125 of Cr.P.C. . ”

(iii) **Santosh Vs. Naresh Pal, reported in (1998) 8 Supreme Court Cases, 447**, in which Hon'ble Apex Court that “ In a proceeding for maintenance under Section 125 of Cr.P.C. the learned magistrate was expected to pass a appropriate orders after being prima facie satisfying about status of marriage of parties. ”

18] The non-applicant strongly denied the fact of marriage in the present proceeding and it is vehemently and categorically submitted that the non-applicant is not the husband of the applicant as there is no marriage took place in between them. The defence of the non-applicant is, marriage has not been proved by the applicant. In view of the citation relied upon by the non-applicant says that the applicant has to prove the fact of marriage by adducing evidence. It is also argued that the applicant failed to prove the marriage as per Hindu Marriage Act. She has also failed to prove that there is ceremony performed as per customs prevailing in the society. Therefore, uncorroborated testimony of the applicant cannot be relied upon. Therefore, she is not entitled to get maintenance from the non-applicant under Section 125 of the Code of the Criminal Procedure.

19] On the contrary, the applicant argued that the marriage has been solemnized as per customs. There was love affair between the applicant and non-applicant and the applicant was pregnant before marriage. It is also submitted that prior to the marriage, there was physical relation between the applicant no. 1 and non-applicant. At the time of marriage, she had a six month baby. She is also relied on the marriage card at Exh.17/A, which prima facie reveals that the marriage of the applicant no. 1 with non applicant was performed on 06/10/2013 at village Mondha in the applicant's house. However, non-applicant strongly objected to the marriage card filed by the applicant and it is submitted that the applicant has prepared a forged

marriage card. The said marriage card is filed with intention to receive maintenance only.

20] Admittedly the applicant has not examined any other witness on her behalf except herself. It is also pertinent to note that during proceeding, the non-applicant filed application for conducting the DNA Test of applicant no.2 and 3 as the non-applicant has challenged the paternity. Therefore, the applicant has given no objection to conduct the DNA Test and accordingly their DNA Test was conducted. The DNA sample of applicant and non-applicant taken and after Chemical Analysis, it appears from the report, the non-applicant is found to be the biological father of applicant no. 2 and 3. After perusal of the DNA Report at Exh.38, it appears that the opinion of the expert i.e. Asst. Chemical Analyzer, Regional Forensic Science Laboratory, State of Maharashtra, Nagpur that he has conducted parental test result and DNA was extracted from the blood sample of Sanjana Dayashankar Khursunge, Rudra Dayashankar Khursunge and Dayashankar Ratan Khursunge. Upon conducting DNA Test, he opined that the Dayashankar Ratan Khursunge is concluded to be biological father of applicant no. 2 and 3. Hence, the DNA Reports corroborated the testimony of the applicant no. 1.

21] Moreover, I would like to mention here the judgment of Hon'ble Apex Court in respect of presumption of marriage when to be considered, in the matter of **Chanmuniya Vs. Chahmuniya**

Virendrakumarsingh Khushwah and another, reported in 2011 (1) SCC 141.

The judgment is considered as a path breaking judgment in relation to the Section 125 of the Code of Criminal Procedure. In which the issues are involved in this case was whether or not a presumption of marriage arises when parties live together for long time ? The Hon'ble Apex Court held that the parties may not have perform a statutory essential of valid marriage but they had entered into this relationship with intention to marry and to be called as husband and wife before the eye of society. The law provides for presumption of marriage where parties have cohabited together for certain period of time, then the court can construe presumptions of marriage and hence, apply the rules of marriage with issues of those parties. All parties that seek to rely on the presumption of marriage must prove that indeed a union existed and such union can be challenged by strong and satisfactory evidence.

22] The next question as to whether claim of maintenance can be sought under Section 125 of the Code of Criminal Procedure if valid marriage is presumed and what wife under Section 125 of Cr.P.C. Means specially having regard to the explanation under Clause B of Section, is answered that the object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. When an attempt is made by the husband to negative the claim of neglected wife depicting her as

kept – mistress on the specious plea that he was already married. The court would insist on strict of earlier branch. The term wife in Section 125 of the Code of Criminal Procedure, includes women who has been divorced by husband or who has obtained divorce from husband and has not remarried. **The woman not having the legal status of wife is thus brought within the inclusive definition of the term wife consistent with the objective. Thus, in those cases, where a man, who lived with a man for long time and even though they may not have legal necessities of valid marriage, should be made liable to pay the woman maintenance if he deserts her.** The Hon'ble Apex Court further held that the man should not be allow to benefit from the legal lei course from enjoying the advantages of de facto marriage without undertaking the duty and obligations. Any other interpretation would lead the woman to vagrancy and destitution, which the provision of maintenance in Section 125 of Cr.P.C. is mean to prevent.

23] In view of the above judgment of Hon'ble Apex Court, it made very clear that the object of Section 125 of Cr.P.C. is to prevent starvation. Therefore, merely not performing ceremonies does not make disentitle to the applicant for getting maintenance under the provision of Code of Criminal Procedure. I have already discussed that the applicant no.1's testimony is corroborated by DNA test as the non-applicant has declared as biological father of applicant no. 2 and 3. So, it can be very well presumed that they have cohabited with each

other for certain period as the applicant delivered two children i.e. applicant no. 2 and 3. Therefore, in view of the judgment of Hon'ble Apex Court, presumption of marriage would arise. In view of judgment of Hon'ble division bench of Apex Court, applicant to be considered as legally wedded wife of non-applicant.

24] So far as refusal or neglect is concerned, admittedly the non-applicant denied a marriage and also denied the relationship with applicants. If the pleading itself shows that he has not provided a single pie to the applicants for their maintenance. There is no evidence on record to show that he has provided financial assistance to his wife and children. Being a husband, his legal as well as moral duty to maintain his wife and being father, his responsibility to maintain his children. However, from the contention itself shows that he has refused to maintain them without sufficient cause. Now, it is to be considered whether he has sufficient means of earning to provide maintenance to the wife and children. It is submitted by the applicant during evidence that the non-applicant is serving in High Tech Pvt. Ltd. A manufacturing unit and he is earning Rs.15 to 25 Thousand per month as a salary. In addition to this, he cultivates an agricultural land, from which he earns Rs.50,000/- to Rs.70,000/- per month. Therefore, annual average income of non-applicant is around Rs.3,00,000/-. Therefore, he prayed maintenance of Rs.4000/- to the applicant no.1, and Rs.3000/- to applicant no. 2 and 3.

25] On the contrary, learned advocate of the non-applicant vehemently argued that the non-applicant has a responsibility of old aged parents, he does labour work and getting Rs.2500/- salary per month, out of which he has to maintain his old aged parents. Therefore, he is unable to maintain his wife and children.

26] It is pertinent to note that the applicant has failed to filed any documentary evidence regarding his service in private limited company and he is getting Rs.15,000/- to Rs.20,000/- salary per month. Moreover, there is no land in the name of non-applicant. There is no concrete evidence on record to show that he used to cultivate the land on lease / theka basis. No oral evidence has been led by the applicant in respect of the cultivation of a land of other farmer. She could have produce the witness of which the non-applicant cultivates the land on lease / theka basis. However, the contention of non-applicant that he earn only Rs.2500/- per moth is beyond imagination.

27] Though there are no document on record to show the exact income of non-applicant, still the non-applicant is liable to pay the maintenance as when he entered into the marriage and became the father of two children, he is abide himself to maintain the wife and children. It is settled principle of law that even though the person is physically disabled and when he entered into the marriage with someone, then he bind himself to maintain his wife and children.

Though there is no income source on record, still he is able bodied person and considering the fact, his average income can be considered Rs.15,000/-. Therefore, he is liable to pay the maintenance to the applicants no. 1 to 3. In view of the above discussion, I answer as to point nos.1 to 3 in affirmative. Hence, considering the income source of non-applicant and inflation, following order will meet end of justice,

ORDER

- [01] Application is partly allowed.
- [02] Non applicant is directed to pay maintenance of Rs.2,000/- (Rupees Two Thousand Only) per month to each applicants from the date of application.
- [03] Cost of this application @ Rs.1000/- be paid to the applicant no.1 by the non-applicant.
- [04] The copy of this order shall be given to applicants.

Date: 15/01/2021.

(N.K. Meshram)
Judicial Magistrate First Class,
Hingna, Dist. Nagpur.

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Asolkar