

Case Registered on: 24/01/2018

Case Decided on: 24/04/2019

Duration: 01 Y. 03 M. 00 D.

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
COURT NO.1, TALUKA GHATANJI, DISTRICT YAVATMAL.

(Presiding Officer : C. N. Ondare)

Misc.Cri.Appl.no.01/2018

Exh.21

1. Sau.Seema Kishor Pawar

Age – 28 years, Occupation – Housewife,

2. Hemant Kishor Pawar

Age – 05 years, Occupation – Education,
 through guardian Mother Applicant no.1 for minor.

Both R/o. C/o. Smt.Sarubai Pundlikrao Rathod

Warzadi, Tq. & Dist. Yavatmal

..... **Applicants**

-----**Versus**-----

Kishor Shravan Pawar,

Age – 35 years, Occupation – Agriculture & Labour,

R/o.- Pimpalshenda, Tq.Kalamb

District Yavatmal.

..... **Non-applicant.**

APPLICATION UNDER SECTION 125(1) OF THE CODE OF CRIMINAL PROCEDURE

Appearances:

Ld.Advocate Shri. N. M. Raut for Applicants.

Ld.Advocate Shri. A. P. Jawke for Non-applicant.

JUDGMENT

(Delivered on this 24th day of April, 2019)

1. The present application is under section 125(1) of the Code of Criminal Procedure seeking thereby the monthly maintenance of Rs.3,000/- each to both the applicants.

2. The case of the applicant in brief is that, applicant no.1 is the legally wedded wife of non-applicant and applicant no.2 is their

son. (Applicant no.1 and non-applicant are hereby referred by their names for convenience.) Marriage of Seema and Kishor was solemnized on 01/05/2011 at Mauja Warzadi as per the rituals and customs prevailing in the '*Banjara*' community. Seema went to Mauja Pimpalshenda, Taluka Kalamb for cohabitation after the marriage in the house of Kishor. In that house the father, mother, brother and sister-in-law of Kishor were residing together. Seema resided in that joint family and she used to perform all the domestic work as a wife and daughter-in-law. Despite performing the duties, Seema had to suffer the physical and mental ill-treatment at the hands of Kishor and his relatives. Kishor was addicted to liquor and gambling. Kishor used to beat Seema under the influence of liquor and when it was informed to the mother-in-law of Seema, then again Kishor beat her mercilessly. Mother-in-law of Seema also used to beat her on that count. Brother of Kishor instead of saying anything to Kishor, he used to bad words against Seema. Seema sustained all this ill-treatment and during that period in the year 2012 in the month of March, she gave birth to the applicant no.2 Hemant. Hemant is now five years old and studying at Motiram Naik English Medium School, Akola Bazar, Tq.&Dist.Yavatmal. Mother and brother of Seema are bearing the educational expenses of Hemant. Seema somehow managed to reside in the house of Kishor for one year after the birth of Hemant, but during that period also she had to suffer ill-treatment at the hands of Kishor and his relatives. Seema was again pregnant. Mother of Kishor forcibly sent Seema to wash the clothes despite there was pain in the stomach of Seema and due to that there was miscarriage. Kishor or his mother did not take Seema to the hospital. Therefore,

Seema called her brother and went to her maternal home. Besides the said ill-treatment, the notice for divorce was sent by the Kishor.

3. It is next submitted by the Seema that she has been residing at the mercy of her mother and brother. But now a days since there is an increase in the educational expenses, Seema feels ashamed to reside at the mercy of her relatives. Therefore, she decided to move the present application. Due to the ill-treatment narrated above, Seema expressed her unwillingness to cohabit with Kishor. According to Seema, Kishor has 6 Acres irrigated agricultural land and Kishor earns Rs.1,20,000/- per year pure profit from that agricultural land. Apart from the said income, Kishor is also doing a labour work. Therefore, Kishor is competent to pay monthly maintenance to both the applicants and in order to satisfy the basic needs such as food, clothes and education, Rs.3,000/- per month each to both the applicants is necessary to be paid by Kishor. None of the family members are dependent on the income of Kishor. They have their separate source of income. On the other hand, Seema has not taken any professional education and she is unable to perform any physical work. Seema is not able to do the labour work. Therefore, according to Seema, it is the responsibility of the Kishor to maintain them. False notice was sent by the Kishor and it was properly replied by Seema. According to Seema, at present she has been residing at Warzadi but sometimes she also resides at Mauja Koli Budruk, Taluka Ghatanji in the house of her Sister. Seema has come to reside in her Sister house for temporary residence. Therefore, according to Seema, Court has jurisdiction. Therefore, the present application.

4. On the other hand, non-applicant vide exh.07 filed his written reply and denied all the adverse allegations. Kishor admitted the relationship and marriage. According to Kishor, his marriage with Seema was performed by pretending that Seema was beautiful, well educated, well cultured. After the marriage, since beginning the behavior of Seema was not proper and it was unnatural. She was short tempered. Seema used to shout loudly on account of trifling reasons. He used to ask Kishor to reside separately from the family members. Due to the quarrelsome attitude of Seema, Kishor decided to reside separately in the same house. Despite that, there was no change in the attitude of Seema. She used to insult Kishor. She behaved abnormally and avoided the cooking. Despite her attitude Kishor bore her with a hope that on the one or other day, there will be change in her attitude and therefore, he provided physical satisfaction to her. Consequently, Hemant was born. On the contrary, after the date of Hemant, Seema became more aggressive. Not only that, Kishor also took Seema to Psychiatrist and it was revealed that she has certain mental disorder. Doctor had told that, this disorder can be cured after taking the required medicine regularly. Instead of taking the medicine regularly she often went to her maternal home and Kishor used to bring her back. Seema did not perform her duty properly and insisted Kishor to accompany her to reside at her parents house. Due to refusal by Kishor, Seema on her own left the house. Many attempts were made by Kishor and even lastly notice was also sent. There was no change. According to Kishor, he is a labour and he seldom gets the labour work. He earns Rs.100/- by doing his labour work. He has the responsibility of his

old aged parents and younger brother. Kishor expressed his unwillingness to pay the maintenance by residing separately. He proposed Seema to cohabit with him along with Hemant. Therefore, he prayed that the present application be rejected.

5 Applicants examined applicant no.1 Sau.Seema Kishor Pawar at exh.10 in support of their claim. Applicants relied on exh.12 notice, exh.13 reply to notice and exh.14 the copy of 7/12 extract. Vide pursis exh.15 applicants closed their side of evidence. On the other hand, non-applicant examined himself at exh.16 and vide pursis exh.18 closed his side of evidence.

6. On the basis of above particulars, the following points arise for determination and my findings to those points with reasons to follow are as under :

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the applicant no.1 proves that she is unable to maintain herself and applicant no.2?	In the affirmative.
2	Whether applicant no.1 proves that non-applicant neglected or refused to maintain applicants ?	In the affirmative.
3	Whether applicant no.1 proves that non-applicant has sufficient means to maintain applicants?	In the affirmative.
4	Whether the Court has jurisdiction ?	In the affirmative.
5.	What order ?	As per final order.

REASONS

AS TO POINT NO.1 to 5:

7. Before proceeding further, it is necessary to decide point no.4 first. According to learned Advocate for the Kishor, since applicants reside at Warzadi and Kishor resides at Pimpalshenda, Taluka Kalamb, this Court has no jurisdiction. On the other hand, the learned Advocate for the applicants submitted that at present applicants are residing at Warzadi but they reside at Mauja Koli Budruk, Taluka Ghatanji temporarily in the house of the Sister of Seema. Therefore, Court has jurisdiction. According to Section 126 of the Code of Criminal Procedure, 1973, the proceedings under section 125 may be taken against any person in any District, where he is, or where he or his wife resides, or where he last resided with his wife, or as the case may be, with the mother of illegitimate child. From the perusal of main application, there is a pleading of Seema that she temporarily resides at Mauja Koli Budruk. Mauja Koli Budruk comes within the jurisdiction of this Court and therefore, this Court has jurisdiction. Hence, I answer point no.4 in the affirmative.

8. Both the parties have admitted the relationship between them. Seema has reiterated her pleading in her evidence. According to the learned Advocate for the applicants due to the cruel treatment by Kishor and his family members, Seema lost child in the womb. Due to that incident, Seema has been residing in her parents house. Kishor did not pay any maintenance to her and Hemant. Seema is unable to maintain herself. There is no document on the record to prove the fact that Seema was suffering from mental disorder and she was taken to Dr. Barlota of Yavatmal. Although it is admitted by the Seema in her evidence that she had visited the Dr.Barlota, it is not a

circumstance against the applicants. Merely on that basis, inference cannot be drawn that Seema is suffering from mental disorder. No efforts at all are made by the Kishor. Mere allegations are not sufficient. Kishor has an agricultural land. Therefore, he prayed that the present application be allowed. On the other hand, the learned Advocate for the non-applicant, argued that there is no document regarding abortion. As a matter of fact many attempts were made by the Kishor and even by sending notice. There is no name of Kishor on the 7/12 extract relied on by applicants. Apart from that mandatory and free primary education is provided by the Government. Therefore, the question of educational expenses does not arise. Kishor is still ready to maintain Seema. Therefore, he prayed that there is no proper reason to Seema to reside separately from Kishor and hence application be rejected.

9. There is absolutely no documentary evidence regarding the competence of Kishor and his earning capacity. Likewise, no such document is filed regarding Seema. Marriage is an admitted fact. It is also an admitted fact applicant no.2 Hemant is their son. It is not the case of Kishor that after leaving of the house by Seema, he provided maintenance to her. There is nothing on the record to suggest an inference that Kishor made any economic arrangement to his son Hemant. There is no divorce between the parties and therefore, it is the moral and legal duty of the Kishor to maintain Seema. Both the parties have made counter allegations but apart from their own evidence, there is no other evidence available. In such set of circumstances and considering the scope of Section 125 of the

Code of Criminal Procedure, 1973, it is a beneficiary provision for women. Since Kishor has failed to show that he made attempts to provide economic assistance atleast to his son Hemant, I am inclined to infer that he has neglected to maintain the applicants. Now as already stated by me the provision is a beneficiary one, the standard of proof is not very strict and therefore the allegations made by the Seema in her pleading as well as in her evidence can be taken into consideration. According to Seema, Kishor is addicted to liquor and gambling and there was loss of child in her womb due to ill-treatment. This is sufficient to infer that, due to that ill-treatment Seema is residing separately. Therefore, in view of the above aspects, I answer point no.1, 2 and 3 in the affirmative and in view of point no.5, I proceed to pass following final order.

ORDER

1. Application is partly allowed.
2. Non-applicant do pay Rs.1,000/-(Rupees One Thousand only) each per month to applicants from the date of application dated 24/01/2018.
3. Copy of this judgment be provided free of cost to the applicant no.1.

Date 24/04/2019

(C. N. Ondare)
Judicial Magistrate First Class,
Court no.1, Taluka Ghatanji.