

Cri. WP-130-2023 C2

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 130 OF 2023

1. Smt. J. [REDACTED] @ P. [REDACTED] P. [REDACTED] [REDACTED]
Aged : 40 Years, Occu: Housewife.

NAVNATH
SITARAM
WAGHMARE

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by NAVNATH
SITARAM
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Date: 2026.07.17
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2. Mst. [REDACTED]
[REDACTED] Student

[REDACTED]
[REDACTED]
[REDACTED] Bhiwandi, District- Thane.

... Petitioners

Versus

1. Mr. P. [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Bhiwandi, District- Thane.

2. The State of Maharashtra
(through Police Inspector)
Narpoli Police Station,
Taluka- Bhiwandi, District- Thane.

... Respondents

Mr. Sachin Dhakephalkar i/b Ms. Surbhi V. Vadhavkar for the
Petitioners.

Mr. Vikas G. Ambetkar for the Respondent No.1.

Ms. Manisha Tidke, APP for the Respondent No.2/State.

CORAM : M.M. SATHAYE, J.

DATE : 16th JULY, 2026

JUDGMENT :

1. Heard learned counsel for the parties. Perused the record.
2. The Petitioners are challenging the judgment and order dated 26.07.2022 passed by the learned Additional Sessions Judge at Thane, in Criminal Revision Application No. 70 of 2016. By the impugned order, the application filed by Respondent No.1 is partly allowed

thereby modifying order dated 19.11.2015 passed by learned Judicial Magistrate, First Class, 5th Court, Bhiwandi in Miscellaneous Application No. 29 of 2010 filed under Section 125 of the Code of Criminal Procedure, 1973, ('Cr.P.C.' for short), directing the Respondent No.1 to pay an amount of maintenance of Rs. 1000/- to Petitioner No.2 only and rejecting the claim of Petitioner No.1.

BACKGROUND

3. The Petitioners filed an application under Section 125 of Cr.P.C., contending *inter alia* that marriage between the Petitioner No.1 and Respondent No.1 was solemnized on 28.01.2009 and Petitioner No. 2 is born from the said wedlock. That Petitioner No.1 was treated nicely for the first month after marriage, however, the Respondent No.1 and his family started demanding money for purchase of Truck to which Petitioner No.1 expressed her inability. It is contended that Respondent No.1 assaulted the Petitioner No.1 and harassed her mentally and physically. It is contended that Petitioner No.1 was left at her parents' home forcibly. It is further contended that on 04.11.2009, Petitioner No.1 gave birth to the Petitioner No.2. That Respondent No.1 never came for the child and never cared to maintain them. It is contended that Petitioner No.1 along with her child, are residing with her parents. That Respondent No.1 owns land and has also constructed a godown and earning from the same. Hence, prayer was made for the maintenance of Rs. 15,000/- per month for each of the Petitioners.

4. The Respondent No.1 filed reply admitting the marriage with Petitioner No.1, however, paternity of Petitioner No. 2 was denied. He contended that prior to their marriage, Petitioner No.1 was married to another person by name Shri. Kaliram Bhiva Tare. He contended that Petitioner No.1 married to Respondent No.1 without obtaining divorce

from the former husband. He further contended that Petitioner No.1 concealed the fact of first marriage from him. That Petitioner No.1 avoided household work and frequently went to parent's home without informing the Respondent No.1 or his family members. That despite their efforts, Petitioner No.1 did not come to the matrimonial home. That Petitioner No. 1 refused to reside with Respondent No.1. He contended that his family only owns fifty gunthas of land, which is ancestral property and Respondent No.1 has only 1/25 share therein. That marriage between the parties is not legal and therefore, the Petitioners are not entitled for maintenance.

5. The learned Judicial Magistrate, First Class, 5th Court, Bhiwandi, by order dated 19.11.2015, allowed the said application, directing the Respondent No.1 to pay an amount of Rs. 2,000/- to the Petitioner No.1 and Rs. 1,000/- to Petitioner No.2 from the date of the application.

6. The Respondent No.1 challenged the said order, by filing Criminal Revision Application No. 70 of 2016, which is partly allowed by impugned order thereby modifying the order to the extent that the claim for maintenance to Petitioner No.1 is rejected, but claim of maintenance and direction to pay Rs. 1,000/- to Petitioner No.2 (child) is continued.

SUBMISSIONS

7. Learned counsel for the Petitioners submitted that Petitioner No.1 is not required to be legally wedded wife for claiming maintenance under Section 125 of the Cr.PC. He relied on following judgments in support of his case:

- i) Chanmuniya Vs. Virendra Kumar Singh Kushwaha and Anr. (2011) 1 SCC 141.

ii) Smt. N. Usha Rani and Anr. Vs. Moodudula Srinivas,
2025 INSC 129.

7.1. He submitted that annulment of marriage between the parties is of no consequence and since Respondent No.1 is capable of paying the amount, he must be directed to pay maintenance to the Petitioner No.1 because she is poor and is unable to maintain herself and therefore, interference is required.

8. On the other hand, learned counsel for the Respondent No.1-husband, relying on affidavit-in-reply dated 16.12.2025, supported the impugned order. He submitted that Petitioner No.1 was cordially welcomed in his house, but he soon realized that Petitioner No.1 purposely avoided household work and would refuse to help his mother. That on 07.05.2009 Petitioner No.1 left the matrimonial house of her own will and went to her parents house without any just cause and reason. That Respondent No.1 came to know that Petitioner No.1 had lodged false complaint against him under sections 498A, 323, 506 r/w 34 of the Indian Penal Code, 1860 ('IPC' for short). That on conclusion of trial, the Respondent No.1 has been acquitted of all offences under order dated 23.03.2023. The said order is produced on record. That existence of earlier marriage was concealed by Petitioner No. 1 and when Respondent No.1 came to know about it, he had filed petition for annulment of marriage under section 11 of Hindu Marriage Act, 1955. That despite various opportunities, Petitioner No.1 failed to appear before the Court and therefore, by order dated 04.05.2022, it is declared that marriage between the parties is null and void because the Petitioner No.1 was already married. He submitted that since Petitioner No.1 does not fit into the term 'wife' in Section 125 of Cr.P.C., she is not entitled to any amount. He further submitted that the Respondent No.1 is not 'a second husband' and the fact of existence of first marriage was

concealed from the Respondent No.1. He submitted that Respondent No.1 is 62 years old and he is not disputing the maintenance amount granted to Petitioner No.2 - child born from the relation. He relied on the judgment of Full Bench of this Court in **Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav and Anr. 1988 1 SCC 530**, in support of his case.

REASONS AND CONCLUSION

9. I have considered the rival submissions and perused the record.

10. At the outset, it is necessary to note that full bench of this Court in the case of **Yamunabai Anantrao Adhav (supra)** has taken a clear view that the term 'wife' appearing in Section 125(1) of Cr.P.C. means only a legally wedded wife and woman whose marriage is null and void, by reason of contravention of Section 5(i) of Hindu Marriage Act, 1955 is not entitled to maintenance.

11. Therefore, the important question is whether a person like Petitioner No.1, whose marriage has been annulled because she was already married and there was no divorce from earlier husband and she concealed it, can claim of maintenance under section 125 of Cr.P.C.

12. In **Chanmuniya (Supra)**, the Hon'ble Supreme Court was considering grant of maintenance in case of live-in-relationship. Taking note of the fast changing social context in our country, as also after considering provisions of the Domestic Violence Act, 2005, ('DV. Act' for short) the Hon'ble Supreme Court expressed an opinion that if monetary relief and compensation can be awarded in case of live-in-relationship under the DV. Act, they should also be allowed under Section 125 of the Cr.P.C. and held that it is inclined to take a broad view having regard to social object of Section 125 of the Cr.P.C.

However, the concerned Bench of the Supreme Court made a request to the Hon'ble Chief Justice to refer three questions to be decided by the larger Bench. It will not be out of place to mention that the Hon'ble two Judges Bench, has taken note of two earlier judgments of the Supreme Court and divergent views and observed as under:

"28. However, striking a different note, in *Yamunabai Anantrao Adhav V. Anantrao Shivram Adhav*¹⁶, a two-Judge Bench of this Court held that an attempt to exclude altogether personal law of the parties in proceedings under Section 125 is improper (see para 6). The learned Judges also held (paras 4 and 8) that the expression "wife" in Section 125 of the Code should be interpreted to mean only a legally wedded wife.

29. Again, in a subsequent decision of this Court in *Savitaben Somabhai Bhatiya v. State of Gujarat*¹⁷, this Court held that however desirable it may be to take note of plight of an unfortunate woman, who unwittingly enters into wedlock with a married man, there is no scope to include a woman not lawfully married within the expression of "wife". The Bench held that this inadequacy in law can be amended only by the legislature. While coming to the aforesaid finding, the learned Judges relied on the decision in *Yamunabai case*¹⁶.

30. It is, therefore, clear from what has been discussed above that there is a divergence of judicial opinion on the interpretation of the word "wife" in Section 125. We are inclined to take a broad view of the definition of

"wife" having regard to the social object of Section 125 of the Code of 1973. However, sitting in two-Judge Bench, we cannot, we are afraid, take a view contrary to the views expressed in the above mentioned two cases."

(emphasis supplied)

An opinion is expressed in Paragraph no. 42 that broad and expansive interpretation should be given to the term 'wife' to include even those cases where a man and woman have been living together as husband and wife 'for a reasonable long period of time' and strict proof of marriage should not be a precondition for maintenance under Section 125 of Cr.P.C.

13. Learned counsel for the Petitioner has not placed on record any order by which the said reference has been decided by the larger Bench. Be that as it may. The said case of **Chanmuniya (supra)** has been thereafter dismissed for non-prosecution by order dated 05.09.2014.

14. In the present case, admitted fact is that Petitioner No.1 is not legally wedded wife of Respondent No.1. It is also admitted that by an order of Court of competent jurisdiction, the marriage between the parties is annulled under Section 11 of the Hindu Marriage Act, 1955, for contravening conditions under Section 5(i) of Hindu Marriage Act. Also, the Respondent No. 1 has been acquitted of alleged offences under IPC. The Respondent No. 1 has not disputed his liability to pay the child as per order.

15. In **Vimala (K.) Vs. Veeraswamy (K.) (1991) 2 SCC 375**, the Hon'ble Supreme Court has observed as under, in fittingly similar facts :

"3. xxxx

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 the neglected wife depicting her as a kept-mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage. The term 'wife' in Section 125 of the Code of Criminal Procedure, includes a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. The woman not having the legal status of a wife is thus brought within the inclusive definition of the term 'wife' consistent with the objective. However, under the law a second wife whose marriage is void on account of the survival of the first marriage is not a legally wedded wife and is, therefore, not entitled to maintenance under this provision. XXXX"

(emphasis supplied)

16. That apart, it has come on record that Petitioner No.1 cohabited with the Respondent No.1 from 28.01.2009 till 07.05.2009 which is just a few days more than 3 months. The parties have been litigating against each other thereafter. In such circumstances, it is impossible to hold that Petitioner can qualify for a person in live-in-relationship, where a man and woman have been living together as husband and wife for a reasonably long period of time. In that view of the matter, the judgment of **Chanmuniya (supra)** will not help the Petitioners.

17. In **Kamala and Ors. Vs. M. R. Mohan Kumar (2019) 11 SCC 491**, also, the Hon'ble Supreme Court has held that where man and woman lived as husband and wife for a considerable length of time only then the presumption of marriage can be made for entitlement of maintenance.

18. So far as the judgment of the **Smt. N. Usha Rani (supra)** is concerned, the facts of the said case was that the Respondent - second husband was fully aware of the first marriage and knowingly entered into marriage with the Appellant not once but twice. In the said case, the Appellant lady had placed on record MoU of separation with her first husband and she had separated from her husband *de-facto* and was not deriving rights and entitlements as consequence of earlier marriage. In this peculiar context, it was held that maintenance cannot be denied to the Appellant.

Facts of the present case at hand are clearly distinguishable in as much as there is an element of deceit involved because the fact of earlier marriage of Petitioner No.1 was concealed from Respondent No.1. In such circumstances the beneficial piece of legislation such as Section 125 of CrPC cutting across all religions and secular in nature, a party can not be permitted to take advantage of his/her own wrong. The concealment and deceit vitiates the case of the Petitioner No.1. In my considered view, provisions of Section 125 of Cr.PC which are enacted with a view to provide summary remedy to neglected wife, can not be exercised in favour of Petitioner No. 1 who has acted deceitfully. I draw support from paragraph 13.2 of **Badshah Vs. Urmila Badshah Godse and Anr. (2014) 4 SCC 188**, where the Hon'ble Supreme Court has taken note of false representation by a party to marriage, albeit in reverse role.

In that view of the matter, the judgment of **Smt. N.Usha Rani (supra)** will also not help the Petitioner No.1.

19. In the aforesaid facts and circumstances and reasons indicated above, this is not a fit case to interfere in the impugned order under which maintenance has been rightly denied to Petitioner No.1. No

perversity is found or pointed out in the impugned order. The view taken is most probable view based on material available on record. Therefore, no interference is required.

20. Writ Petition is dismissed. No order as to costs.

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

(M.M. SATHAYE, J.)