

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Application No. 484 of 2015

Harshvardhan Govardhan Bhalerao. .. **Applicant.**

Versus

Vandana Harshvardhan Bhalerao
And Another.

.. **Respondents.**

Shri. Vijay B. Patil, Advocate, for applicant.

Shri. G.A. Nagori, Advocate, for respondent Nos.1 and 2.

CORAM: T.V. NALAWADE, J.

DATE : 16th JUNE 2015

ORDER:

1) The proceeding is filed to challenge the order made on Exhibit 15 in Criminal Misc. Application No.330 of 2013. Criminal Misc. Application No.330 of 2013 is filed by the respondent, wife under section 125 of the Code of Criminal Procedure. In the said proceeding application came to be filed by the husband for dismissal of the proceeding. He has contended that in the previous proceeding like Misc. Application No.348/2010 which was filed under the provisions of the Protection of Women from

Domestic Violence Act, 2005 the parties settled the dispute and the wife had taken *lump sum* amount as maintenance and she had started living separate as per the terms and conditions of the compromise. So according to him the wife is not entitled to claim any maintenance under section 125 of the Code. Both the sides are heard.

2) The order made by the trial Court shows that the application was second application of similar nature filed in the proceeding. The first application at Exhibit 13 was rejected on the grounds given in Section 125(4) of the Criminal Procedure Code. Learned counsel for the applicant, husband submitted that when in judicial proceeding the wife had given up her right to claim maintenance, the present proceeding is liable to be dismissed. The submission is not at all acceptable.

3) The present proceeding is filed under section 125 of the Cr.P.C. and it is at the stage of evidence. The parties are yet to lead their evidence. The wife is yet to establish her entitlement in the present proceeding. The husband can take defences as available to him under sub

section (4) of section 125 of the Cr.P.C. even of compromise in the previous proceeding between the parties.

4) Learned counsel for the applicant placed reliance on reported cases (1) **2003 Bom.C.R. (Cri.) 1455** (Bombay High Court) (**Vitthal Hiraji Jadhav v. Harnabai Vitthal Jadhav**); and, (2) **2014 ALL MR (Cri) 168** (Kerala High Court) (**Rajesh R. Nair v. Meera Babu**). The facts of the first case show that the provisions of Section 125(4) of the Code were not followed by the learned Judicial Magistrate. Such is not the case in the present matter. The trial Court is expected to decide the defence which is available to the husband under section 125(4) of the Cr.P.C. In view of these circumstances this Court holds that no interference is possible in the order. The application stands dismissed. The observations are only for the purpose of the present proceeding.

Sd/-
(**T.V. NALAWADE, J.)**

rs1