

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.35 OF 2015
IN
CRIMINAL REVISION APPLICATION NO. 17 OF 2015**

Jagruti Bhatia

Applicant

Vs

Samir Bhatia and Anr.

.. Respondents

Ms. Seema Sarnaik a/w Mr. Ameya Tamhane, Advocate for Applicant.

Mr. Puneet Chaturvedi i/b Yogendra M. Kanchan, Advocate for Respondent no.1.

Mr A.R.Patil, APP for State.

CORAM : R.G.KETKAR,J.
DATE : 05/02/2015

ORAL JUDGMENT:

1. Heard Ms.Seema Sarnaik, learned counsel for the applicant, Mr. Puneet Chaturvedi, learned counsel for respondent no.1 and Mr. A.R.Patil, learned A.P.P. for respondent no.2 at length.

2. Rule. The learned counsel waive service on behalf of the respondents. At the request and by consent of the parties, Rule is made returnable forthwith and the Application is taken up for final hearing.

3. By this Application, the applicant-wife has prayed for recalling the order dated 20.1.2015 passed by this Court in

Criminal Revision Application No.17 of 2015. By that order, Criminal Revision Application No.17 of 2015 preferred by the applicant was dismissed.

4. In support of this application, Ms Sarnaik submitted that Criminal Revision Application No.17 of 2015 was preferred by the wife challenging the Judgment and order dated 17.7.2014 passed by the learned Judge, Family Court No.2, Mumbai in Petition No.E-17 of 2011. She submitted that in that petition, the applicant had claimed maintenance at the rate of Rs. 1,00,000/- per month as and by way of permanent maintenance for herself and both the daughters in terms of prayer clause (f) of the petition under Section 125 of the Code of Criminal Procedure Code, 1973 (for short, "Cr.P.C."). However, while deciding the petition along with Petition No.A-1585 of 2010 filed by the husband, the Family Court proceeded on the footing that the petitioner had claimed Rs.10000/- per month for herself and both the daughters towards maintenance. She submitted that the Family Court committed error in that regard. Though she had claimed maintenance at the rate of Rs.1,00,000/- per month, the Family Court proceeded on the premise that the applicant had prayed for maintenance of Rs.10,000/- per month for herself and both the daughters. Proceeding on that premise even this Court dismissed the Revision Application filed by the petitioner as is evident from paragraph 6 of the order dated 20.1.2015. She,

therefore, submitted that this is a fit case for recalling the order dated 20.1.2015. Upon taking instructions from the applicant who is present in the Court, she states that if the order is recalled and the Revision Application is restored to the file of this Court, she may be permitted to withdraw the petition with a liberty to move the Family Court for recalling the order dated 17.7.2014 passed in Petition No. E-17 of 2011. In support of her submission, she relied upon the decision of the Apex Court in the case of State of Punjab vs. Davinder Pal Singh Bhullar, 2011 (14) SCC 770 and Review Petition (CRL) No.453 of 2012 in Writ Petition (CRL) 135 of 2008, Kamlesh Verma vs. Mayawati and Ors, decided by the Apex Court on 8.8.2013.

5. On the other hand, Mr Chaturvedi submitted that this Court has no power to recall the order dated 20.1.2015 passed in the Revision Application. He submitted that after signing of the order the Court becomes functus officio. He submitted that only in case where an order is obtained by fraud by misleading the Court, the Court can recall the order under section 362 of Cr. P. C. In support of this submission, he relied upon the following decisions:

1. R.Annapurna Vs. Ramadugu Anantha Krishna Sastry (2002) 10 Supreme court Cases 401;
2. State of Punjab (supra) and in particular paragraphs 26, 35 and 40;
3. Mahesh Ranka Vs. State of Maharashtra, 2006(1)

Bom.C.R. (Cri) 702.

6. I have considered the submissions made by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, respondent no.1-husband filed Petition No.A-1585 of 2010 for divorce under section 13(1) (ia) of the Hindu Marriage Act, 1955. Petition No.E-17 of 2011 was filed by the applicant for maintenance under section 125 of Cr.P.C. Prayer (f) of that petition reads as under :

“(f) The Hon'ble Court be pleased to direct the respondent to pay the petitioner a sum of **Rs.1,00,000/- per month** as and by way of permanent maintenance for herself and the children.”

(emphasis supplied)

Perusal of the order dated 17.7.2014 passed by the Family Court and in particular paragraph 36 thereof, prima facie, shows that the Family Court proceeded on the premise that the applicant had prayed for maintenance at the rate of Rs.10,000/- per month for herself and both the daughters. In fact, in paragraph 36 the Family Court further observed that the applicant did not amend the pleadings suggesting that the applicant should have claimed maintenance higher than Rs.10,000/- per month. In view thereof, as is evident from paragraph 6 of the order dated 20.1.2015, this Court also proceeded on the premise that the applicant had

claimed maintenance at the rate of Rs.10,000/- per month.

7. The question is whether this amounts to a clerical or arithmetical mistake while passing the order dated 20.1.2015.

Section 362 of Cr.P.C. reads as under:

“362. Court not to alter judgment – Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.”

Perusal of Section 362 shows that save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, **shall alter or review the same except to correct a clerical or arithmetical error.**

8. For the reasons already indicated, in my opinion, the Family Court prima facie committed clerical or arithmetical error while proceeding on the premise that the applicant had claimed maintenance at the rate of Rs.10,000/- per month which is contrary to prayer clause (f) in Petition No. E-17 of 2011, which is extracted herein above. Equally, this Court while disposing of Revision Application no.17 of 2015 proceeded on the premise that the applicant had claimed maintenance at the rate of Rs.10,000/- per month. In my opinion, this case clearly falls in

Section 362 of Cr.P.C. for correcting the clerical or arithmetical error.

9. Mr.Chaturvedi relied upon the decision of this Court in the case of R. Annapurna (supra) to contend that the High Court has no power to recall or review its own order. In that case, the order dated 3.10.1996 passed by the Division Bench of the High Court of Andhra Pradesh in Criminal Petition No.1878 of 1996 was impugned. On a complaint lodged by the appellant therein, chargesheet was filed against respondents 1 to 5 alleging offences under sections 406 and 420 Indian Penal Code, 1860. Some of the respondents filed a petition before the High Court on 13.6.1994 in Criminal MP No.1264 of 1994 praying for quashing the criminal proceedings initiated against them. That Petition was dismissed by the High Court by order dated 28.1.1995. Appellant R. Annapurna was not heard by the High Court before passing that order. Without mentioning the aforesaid facts, the respondents filed another criminal Petition (No.1878 of 1996) before the High Court on 22.2.1996 for quashing the criminal proceedings. Even in that proceedings, appellant R.Annapurna was not made a party. Thus, without being informed of the earlier order of the High Court dated 28.1.1995 and without affording an opportunity to the appellant for being heard, the Division Bench passed the order on 3.10.1996. When the appellant came to know of that order, she moved the High Court

with a prayer to recall the said order. The same was dismissed by the order dated 3.10.1996 on the ground that the High Court had no power to recall or review its own order. It is in that context the Apex Court held that the High Court was right in rejecting the prayer for recalling the order. As noted earlier, in the present case there was a clerical or arithmetical error in the proceeding on the premise that the applicant had claimed maintenance at the rate of Rs.10,000/- per month as against Rs. 1,00,000/- per month. In view thereof, the decision in the case of R. Annapurna does not advance the case of the first respondent.

10. In the case of Mahesh Ranka (*supra*), this Court held that under section 362 of Cr.P.C, order cannot be recalled unless the order is obtained by fraud by misleading the Court. Perusal of Section 362 shows that once the Judgment is signed in Criminal Case, it cannot be recalled or reviewed, save and except to correct a clerical or arithmetical error. I have already held that there was a clerical or arithmetical error. For the reasons already indicated, even this case does not advance the case of the first respondent.

11. In the case of State of Punjab (*supra*), the Apex Court in paragraph 26 observed that the moment the order for disposing of a case is signed, the Court becomes *functus officio*. It was further observed that such an order cannot be altered except to

the extent of correcting a clerical or arithmetical error. In view thereof, I do not find that this Judgment in any way assists the first respondent, rather in my opinion this case assists the applicant.

12. Mr. Chaturvedi has submitted that this Court has no power to recall or review its own order. As observed by the Apex Court in paragraph 26 in the case of *State of Punjab (supra)*, the moment the order for disposing of a case is signed, the Court becomes functus officio. He, therefore, submitted that this Court cannot recall the order.

13. In the present case, even this Court proceeded on the premise that the petitioner-wife had claimed Rs.10,000/- per month maintenance for herself and both the daughters. While dismissing the petition, in paragraph 7 it was made clear that the petitioner will be at liberty to apply for enhanced maintenance if the circumstances so warrant. It is settled principle of law that no party should suffer because of the mistake committed by the Court. In the facts and circumstances of the present case, I am more than satisfied that while dismissing the revision application this Court committed mistake in proceeding on the premise that the petitioner-wife had claimed maintenance of Rs.10000/- per month for herself and two daughters. It is now evident that the said premise is contrary to record. Even if I accept the submission of Mr Chaturvedi that no provision of Cr.P.C. enables

the Court to recall the order, in my opinion, Section 482 thereof can still be invoked for the purpose of securing ends of justice.

Section 482 reads as under:-

“482. Saving of inherent power of High Court:- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

(emphasis supplied)

Perusal of Section 482, extracted herein above, clearly shows that nothing in this Code (Cr.P.C.) shall be deemed to limit or affect the inherent powers of the High Court to make such orders as it may be necessary to secure the ends of justice.

14. For all these reasons, I am more than satisfied that in the facts and circumstances of the present case, this Court committed a clerical or arithmetical error while dismissing the Revision Application on the premise that the applicant had claimed maintenance at the rate of Rs.10,000/- per month. In view thereof, the order dated 20.1.2015 is recalled. Rule is made absolute accordingly.

15. Ms. Sarnaik, upon taking instructions from the applicant who is present in the Court, states that she may be permitted to withdraw the Revision Application with a liberty to take out appropriate application before the Family Court for recalling the

order dated 17.7.2014 passed in Petition No. E-17 of 2011. Mr. Chaturvedi states that respondent no.1 is also present in the Court.

16. In view thereof, by consent of the parties, Criminal Revision Application No.17 of 2015 is taken on Board. On the motion made by Ms. Sarnaik, Revision Application No.17 of 2015 is allowed to be withdrawn with a liberty as prayed for. All contentions on merits of the parties on the proposed Application are kept open. The Family Court will decide the Application uninfluenced by the observations made herein.

All the parties including the Family Court to act on the authenticated copy of this order.

(R.G.KETKAR, J.)