

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 670 OF 2015

SHAIKH HAMID S/O SHAIKH ANIS
VERSUS
JAMILA W/O SHAIKH HAMID AND ANOTHER

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Advocate for Petitioner : Mr. Hamzakhan I. Pathan

Advocate for respondent No.1: Mr. S.K. Shiakh

APP for Respondent No.2: Mr. A.R. Kale

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CORAM : V. K. JADHAV, J.
DATED : 29th NOVEMBER, 2016

PER COURT:-

1. Heard finally with consent of the parties at admission stage.
2. Being aggrieved by the order passed by the Additional Sessions Judge, Vaijapur, dated 1.4.2015, below Exh.15, in Criminal appeal No. 6 of 2014, the petitioner preferred this criminal writ petition.
3. Brief facts, giving rise to the present writ petition, are as follows:-
 - a) Respondent No.1 wife filed an application bearing Criminal M.A. No. 90 of 2011, before learned J.M.F.C. Gangapur, under Section 125 of Cr.P.C. for grant of maintenance. The learned Judge of the trial Court has allowed the said application and granted maintenance at the rate of Rs.1500/- p.m. to the respondent wife. Being aggrieved by the said order of maintenance, the petitioner husband preferred criminal

appeal No. 6 of 2014 before the Additional Sessions Judge, Vijapur. It is not clear as to how criminal appeal is preferred against the order of maintenance. During pendency of said appeal, the petitioner filed an application Exh.13 showing his willingness to deposit Rs.20,000/- towards arrears of maintenance amount and requested the lower appellate court to stay the recovery proceeding. Learned Judge of the appellate court, after hearing both sides and considering the submissions, passed order below stay application to the effect that in view of part payment made by the petitioner husband, execution of the order under appeal is hereby stayed till the next date. Thereafter, the petitioner husband has filed an application Exh.15 for continuation of the stay. However, learned Additional Sessions Judge, by impugned order dated 01.04.2015 rejected the said application. Hence, this criminal writ petition.

4. Learned counsel for the petitioner husband submits that the learned Judge of the lower appellate court has not decided the stay application on merits and in absence of petitioner husband, rejected the application Exh.15. The learned Additional Sessions Judge, on depositing the part payment by the petitioner, stayed the execution of the order under appeal till the next date, but thereafter, has not passed any further order either continuation of stay or any other order, though the petitioner husband has filed an application Exh.14. The learned Additional Sessions Judge has kept the stay application filed alongwith

the appeal and also application Exh.14 pending without passing any order thereon and simply rejected application Exh.15 by impugned order dated 01.04.2015.

5. Learned counsel for the respondent wife submits that the arrears of maintenance are more than Rs.1,00,000/-. The petitioner husband has only deposited Rs.20,000/- before the lower appellate court and lower appellate court, in terms of the consent given by the respondent wife, stayed the execution proceeding till the next date. The respondent wife has given consent for staying the execution proceeding for the reason that on the next date the petitioner husband would deposit the remaining amount of arrears of maintenance. However, the petitioner husband, thereafter, has not deposited any amount of arrears of maintenance and simply filed an applications after applications for continuation of stay. The learned Additional Sessions Judge has therefore, rightly rejected application Exh.15. No interference is required.

6. On perusal of contents of the application for stay filed alongwith the appeal, it appears that the same is not disposed of. Furthermore, in view of the application filed at Exh.13, and after hearing both sides on the said application, learned Additional Sessions Judge has passed order on stay application and stayed the execution of the order under appeal till the next date in view of the part payment made by the

petitioner husband. However, the said stay application is not disposed and no further orders seems to have been passed on the said application. In view of this, the order passed on application Exh.15 is meaningless and is required to be quashed and set aside with certain directions. Hence, I proceed to pass the following order:-

O R D E R

- I. Criminal writ petition is partly allowed.
- II. The order dated 01.04.2015 passed below Exh.15 in Criminal Appeal No. 6 of 2014, by learned Additional Sessions Judge, Vaijapur is hereby quashed and set aside with following directions:-

“The learned Additional Sessions Judge, Vaijapur shall decide the stay application filed alongwith the appeal, after giving opportunity of being heard to both the parties at the earliest, preferably within a period of one month from the date of receipt of this order.”

- III. Criminal writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

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