

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

Criminal Revision Application No. 199 of 2011

District : Jalgaon

Nilkant Pitambar Wadile,
Age : 39 years,
Occupation : Clerk in a private
Education Society, Bhoiwada,
R/o. Thalner, Bhoiwada,
Taluka Shirpur,
District Dhule.

.. Applicant.

versus

1. Manisha Nilkant Wadile,
Age : 35 years,
Occupation : Household.
2. Dhanashri @ Sonali d/o. Nilkant
Wadile,
Age : 10 years, minor,
under guardianship of
non-applicant no.1.

Both R/o. Wanashree Housing
Society, Plot No.10,
near Forest Colony,
Ring Road, Jalgaon,
District Jalgaon.

.. Non-applicants
(Original applicants)

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*Mr. Pankaj A. Bharat, Advocate, holding for
Mr. Milind Patil, Advocate, for the applicant.*

Mr. M.M. Bhokarikar, Advocate, for the non-applicants.

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CORAM : Z.A. HAQ, J.

DATE : 28TH NOVEMBER 2016

ORAL JUDGMENT :

Heard Adv. Mr. P.A. Bharat holding for Adv. Mr. Milind Patil for the applicant, and Adv. Mr. M.M. Bhokarikar for the non-applicants.

02. Rule. Rule made returnable forthwith.

03. The non-applicants (wife and minor daughter of the applicant) filed Criminal Misc. Application No. 87/2004 under Section 125 of the Code of Criminal Procedure, 1973, which came to be allowed by order passed on 13th July 2007 and the applicant was directed to pay Rs. 1,000/- per month to present non-applicant no.01 and Rs. 500/- per month to present non-applicant no.02 towards maintenance. The non-applicants filed Special Civil Suit No. 63/2006 under Section 18 of Hindu Marriage Act, which came to be decreed by judgment dated 16th August, 2007 and the present applicant was directed to pay Rs. 2,000/- per month to the non-applicant no.01 and Rs. 1,000/- per month to the non-applicant no.02. The non-applicants filed Regular Civil Suit No. 21/2009 which came to be decreed by the judgment dated 21st June 2011 and the applicant is directed to pay Rs. 4,000/- per month to the non-applicant no.01 and Rs. 2,000/- per month to the non-applicant no.02 towards maintenance.

The non-applicants filed Summary Criminal Case

No. 788/2008 under the provisions of Protection of Women from Domestic Violence Act, 2005 which is allowed by the learned Magistrate by judgment dated 26th February 2010 and the applicant is directed to pay Rs. 2,000/- per month to the non-applicant no.01 and Rs. 1,000/- per month to the non-applicant no.02.

The applicant had filed appeal before Sessions Court challenging the order passed by the learned Magistrate which is dismissed by the impugned judgment.

04. On 28th January, 2013, this Court passed the order as follows :-

" Heard.

2. After hearing the matter on earlier date i.e. January 23rd, 2013, submissions are further advanced today. Nilkant and Manisha, the couple is present, identified by respective Counsel. A joint Pursish signed by the couple and the learned Advocates is presented which informs that the petitioner Nilkant shall continue to pay Rs. 9,000 (Rs. nine thousand) per month as maintenance regularly to wife Smt. Manisha and the daughter. The remittance of Rs. 9,000/- per month shall be in the Bank account of Smt. Manisha. If she has not yet opened the Bank account, within fifteen days she will open it, intimate the Bank account details to either Nilkant or his Advocate, through her

Advocate, where cheque could be deposited by Nilkant. The wife, respondent no.01, has agreed to allow the petitioner to have access to the daughter once in a week, preferably on Sunday, between 12 noon to 07 p.m. She agrees, the petitioner husband will take the daughter Dhanashri with him for such duration either in a temple, park, hotel and other places of amusement.

To ensure progress in the matter, S.O. by consent, to 14th March 2013. "

05. The matter continued to pend, sometimes adjourned on the representation given by the parties that they are trying to amicable settle the matter. The matter was taken up for consideration on 09th December, 2013 on which date, following order came to be passed :-

"1. Partly heard. The learned Counsel for the applicant prays for time.

2. Stand over to 20th January 2014.

3. In the meantime, no steps for recovery of the maintenance ordered, as per the impugned order, shall be taken by the respondents. "

06. On 25th June, 2014, again the learned Advocates for the respective parties were heard and following order came to be passed :-

" In the present case, the applicant, who is the husband and who is under obligation in view of the order passed by the Court below to pay the maintenance allowance to his wife and daughter, regularly. This Court [Coram : A.V. Potdar, J.] passed an order on 15th September, 2011 and granted *interim* stay. Since that day, the applicant is enjoying the stay.

[2] For one reason or other, the present matter is adjourned from time-to-time and today is 24th occasion when the matter is appearing on the Board. The Court is not entering into the area as to who had obtained the adjournments however, fact remains that, since the year 2011 this matter is pending for admission.

[3] Yesterday also the matter was listed on the board. On that day, the learned Counsel submitted that, in fact, the applicant has deposited entire amount of arrears of maintenance and he will be producing receipts before this Court today, therefore, matter was adjourned till today.

[4] Today the learned Counsel for the applicant expressed his inability to file such payment receipts on record; since according to him, he could not obtain instructions from his client. The learned Counsel for the beneficiary of the order, namely wife and daughter submitted that, an amount of Rs. 8,14,604/- is outstanding. This amount is not inclusive of the amount which the present applicant has directly

deposited in the bank account of the present Respondent No.1.

[5] The learned Counsel for the applicant has not made any submission as to what amount his client is ready to pay or deposit. In that view of the matter, this Court has no option but to vacate the *interim* stay order granted in favour of the applicant on 15/09/2011. Hence, following order is passed :-

ORDER

[i] Interim stay granted by this Court on 15th September, 2011 is vacated.

[ii] The respondents are at liberty to execute the order.

[iii] Put up on 6th August, 2014."

07. After hearing the learned Advocates for the respective parties, I find that the fact that orders are passed in Criminal Misc. Application No. 87/2004, Special Civil Suit No. 63/2006, and Regular Civil Suit No. 21/2009 is not disputed by the non-applicants. However, I find that the learned Magistrate and the learned Sessions Judge have not considered the effect of the above orders while disposing the present proceedings. The subordinate Courts have not considered at all that the applicant

is directed to pay Rs. 4,000/- per month to the non-applicant no.01 and Rs. 2,000/- per month to the non-applicant no.02 under the decree passed in Regular Civil Suit No. 21/2009 on 21st June 2011 and this is perhaps because Summary Criminal Case No. 788/2008 came to be decided on 26th February, 2010 i.e. after filing of Regular Civil Suit No. 21/2009 and Criminal Appeal No. 23/2010 came to be decided on 25th July 2011 i.e. just one month after the decree came to be passed in Regular Civil Suit No. 21/2009.

08. Be that as it may, as the relevant aspects i.e. the orders passed in Special Civil Suit No. 63/2006 and Regular Civil Suit No. 21/2009 directing the applicant to pay maintenance to the non-applicants have not been considered by the subordinate Courts, in my view, the impugned judgments are required to be set aside and the matter has to be remanded to the learned Magistrate for fresh consideration.

09. Considering the facts on record, the following order is passed to sub-serve the ends of justice :-

(a) The judgment passed in Criminal Appeal No. 23/2010 on 25th July, 2011 is set aside.

(b) The judgment passed by the learned Magistrate in

Summary Criminal Case No. 788/2008 is set aside.

(c) The matter is remitted to the Court of Chief Judicial Magistrate, Jalgaon, for deciding the complaint filed by the non-applicants afresh after considering all the material on record.

(d) As there have been several litigations between the parties, they are permitted to place on record the subsequent events by incorporating necessary pleadings and filing necessary documents in support of their contentions.

(e) The applicant had agreed to pay Rs. 9,000/- per month towards maintenance to the non-applicants as recorded by this Court in the order passed on 28th January, 2013. Considering the facts on record, as an interim arrangement, it is directed that the applicant shall continue to pay Rs. 9,000/- per month towards maintenance to the non-applicants till the disposal of the complaint by the learned Chief Judicial Magistrate.

(f) If the applicant has not paid the amount of Rs. 9,000/- per month since 01st February 2013 and is in arrears of any amount, the same shall be paid by the applicant within 06 weeks. It is clarified that in addition to payment of arrears of amount of maintenance as per order dated 28th January 2013, the

applicant shall continue to pay Rs. 9,000/- per month towards maintenance to the non-applicants regularly before 10th of each month starting from December 2016 till disposal of proceedings by the learned Chief Judicial Magistrate.

(g) The Chief Judicial Magistrate shall dispose the complaint within 04 months.

(h) Rule made absolute in the above terms. In the circumstances, parties to bear their own costs.

(Z.A. HAQ)
JUDGE

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