

CRIMINAL WRIT PETITION NO.946 OF 2016

VERSUS

.....
Shri N.K.Tungar, advocate for petitioner
Shri A.P.Bhandari, advocate for respondent nos. 1 to 3
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CORAM : N.W.SAMBRE, J.

DATED : 13th October, 2016

PER COURT :-

Heard learned counsel for respective parties.

2. In Regular Civil Suit No. 67 of 2010 for maintenance, a settlement came to be recorded by the learned Civil Judge, Junior Division, Ashti at Exh.65-A. Clause (8) of the said settlement provides that the present respondents have given up claim for future maintenance pursuant to the terms of settlement as quoted therein.

3. Vide order, dated 30.10.2013 in Miscellaneous Criminal Application No. 50 of 2010, the learned Magistrate directed payment of maintenance under the provisions of the Protection of Women from Domestic Violence Act, 2005 (for short, 'the D.V.Act'). Admittedly, the settlement is arrived at between the parties subsequent to the order of the learned Magistrate, as the settlement is recorded on 23.11.2013.

4. What is to be noted from the arguments is, though specific ground is raised pointing out settlement recorded in civil suit in relation to payment of maintenance, the appellate Court, while dealing with the appeal under Section 29 of the D.V. Act, has not considered the said issue of settlement. In my opinion, the settlement, as is recorded before the learned Magistrate on 23.11.2013, will have direct bearing over the order passed by the appellate Court, rather the appellate Court was expected to consider the issue of settlement and its impact on the claim of the

parties for benefit under the provisions of the D.V. Act.

5. Upon perusal of the terms of settlement, as are reflected in Exh.65-A in Regular Criminal Case No. 67 of 2010, what is required to be appreciated is that the respondent has given up the claim for future maintenance for herself and her minor two children; whereas the right to claim maintenance prior to the execution of deed of settlement survives.

6. The order of maintenance, as is passed by the learned Magistrate in the present proceedings, under the provisions of the D.V. Act, will be required to be confined to the extent of date of settlement in the light of the terms of settlement which are arrived at in between the parties.

7. In this background, this Court has no hesitation to hold that the respondent, will be entitled for maintenance till 23.11.2013 i.e. the

date of recording of settlement between the parties.

8. In the result, the petition is partly allowed.

The order, dated 30.10.2013, passed by the learned Judicial Magistrate, First Class, Ashti, in Miscellaneous Criminal Application No. 50 of 2010 is modified.

It is declared that the order of maintenance, as is passed under the provisions of the D.V. Act, below Exh.65, in Miscellaneous Criminal Application No. 50 of 2010 will govern the issue till 23.11.2013 i.e. the date of recording of settlement.

The respondents are at liberty to withdraw the amount deposited.

Criminal Writ Petition, as such, stands disposed of in above terms.

(N.W.SAMBRE, J.)

