

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

927 CRIMINAL APPLICATION NO. 6453 OF 2015

ALEEM KHAN RASOOL KHAN PATHAN
VERSUS
NAZIYA BEGUM ALEEM PATHAN

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Advocate for Applicant : Mrs. Ansari A. N.
Advocate for Respondent sole : Mr. M. M. Choudhari

CORAM : V. K. JADHAV, J.

DATE : 3rd March, 2016

PER COURT :

1. The respondent wife had filed application under Section 125 of the Code of Criminal Procedure bearing No. Petition E-126/2011 for grant of maintenance. Learned Judge of the Family court, after hearing the parties, by order dated 11.10.2012, granted maintenance to the respondent wife @ Rs.1500/- per month. Meanwhile, during the pendency of the said maintenance application, the respondent wife has also filed complaint under the provisions of Protection of Women from Domestic Violence Act bearing M.A. No.659/2011 and even in that proceedings, the petitioner husband has been directed to pay maintenance of Rs.3000/- per month to the respondent wife and compensation of Rs.30,000/- alongwith Rs.1000/- towards monthly rent of the house.

2. In the year 2012, the petitioner husband filed petition bearing No.A-427/2012 before the Family Court for restitution of conjugal rights. On 03.03.2013, the said petition came to be disposed of in terms of compromise arrived at between the parties. The respondent wife thereafter filed Criminal M.A. No.98/2014 before the Judicial Magistrate, First Class, Aurangabad for implementation of the order passed in M.A. No.659/2011. The said matter appears to have been settled as per compromise deed dated 24.11.2014. It is recorded in the said compromise that the respondent wife already started cohabiting with the petitioner husband from 27.02.2013. It was agreed by them that the order passed in maintenance application bearing No. Petition E-126/2011 and further order passed in M.A. No.659/2011 under the Protection of Women from Domestic Violence Act would not be enforced and the same shall be deemed to have been cancelled.

3. Before the compromise was effected in Criminal M.A. No.98/2014, the respondent wife had filed petition No. E.R.275/2014 before the Family Court for execution of order of maintenance passed in Petition No. E-126/2011. In the said petition (E.R.No.275/2014), the present

petitioner husband filed application on 23.06.2015 at Exh. 8 raising objection that in the light of compromise effected between the parties, the respondent wife is not entitled to execute the said order of maintenance, as agreed between the parties. The learned Principal Judge of the Family Court, by the impugned order dated 17.11.2015, rejected the application Exh.8 filed by the petitioner husband in Petition No. ER-275/2014. Hence the present application.

4. The learned counsel for the applicant submits that in terms of compromise arrived at in Criminal M.A. No.98/2014 dated 24.11.2014, the respondent wife is not entitled to execute the orders passed in Petition No. E-126/2011 and also the order passed in M.A. No. 659/2011. The learned counsel submits that the respondent wife has unequivocally agreed that she would not implement the orders passed in those proceedings and the said orders would be deemed to have been cancelled in terms of the compromise recorded between the parties in Cri. M. A. No. 98/2014. The learned counsel therefore submits that the order passed by the learned Principal Judge, Family Court, Aurangabad is not sustainable and the same is liable to be quashed and set aside.

5. The learned counsel for the respondent wife submits that after the so called compromise between the parties, the petitioner husband has treated properly to the respondent wife only for 15 days. The learned counsel submits that in order to avoid compliance of the order of maintenance, the petitioner husband has played fraud upon the respondent wife and after the compromise effected between them, he started harassing her and finally driven her out of the house.

6. The learned counsel further submits that unless and until the order of maintenance passed by the Court below is set aside in revision as provided under section 125 (4) and (5) of Code of Criminal Procedure, or that the order is varied or cancelled as provided under section 127 of the Code of Criminal Procedure, the respondent wife is entitled to execute the said order of maintenance.

7. The learned counsel, in order to substantiate his contention, placed reliance on the decision of the Apex Court in the case of **Bhupinder Singh Vs. Daljit Kaur**, reported in **AIR 1979 SUPREME COURT 442**. In paragraphs 7 and 8 of the said judgment the Apex Court has made following observations:

"7. We are concerned with a Code which is complete on the topic and any defence against an order passed under S.125, Cr.P.C. must be founded on a provision in the Code. Section 125 is a provision to protect the weaker of the two parties, namely, the neglected wife. If an order for maintenance has been made against the deserter it will operate until vacated or altered in terms of the provisions of the Code itself. If the husband has a case under S.125 (4), (5) or S. 127 of the Code it is open to him to initiate appropriate proceedings. But until the original order for maintenance is modified or cancelled by a higher court or is varied or vacated in terms of Section 125(4) or (5) or S.127, its validity survives. It is enforceable and no plea that there has been cohabitation in the interregnum or that there has been a compromise between the parties can hold good as a valid defence. In this view, we hold that the decisions cited before us in favour of the proposition contended for by the petitioner are not good law and that the view taken by Sir Shadi Lal Chief Justice is sound.

8. A statutory order can ordinarily be demolished only in terms of the statute. That being absent in the present case the Magistrate will execute the order for maintenance. Our order does not and shall not be deemed to prejudice the petitioner in any proceedings under the law which he may start to vacate or

vary the order for maintenance."

8. The learned counsel for the respondent wife has also placed reliance on the case of **Pandurang Laxman Tormal Vs. Savita Pandurang Tormal and another, 2013 (4) Bom. C.R. (Cri.) 177**, wherein this Court, by relying upon the ratio laid down in **Bhupinder Singh's** case supra., has passed the orders in the maintenance proceedings. The learned counsel also relied on the following cases:

(1) Dayanand s/o Sonu Ghodke Vs. Asha w/o Dayanand Ghodke 2004 ALL MR (CRI)2287 (Bombay High Court, Aurangabad Bench)

(2) Rajesh Kochar Vs. Reeta Kumari, 2002 Cri. L.J.3357 (Patna High Court)

9. So far as the order passed by the Family Court in terms of provisions of Section 125 of the Criminal Procedure Code granting maintenance to the wife is concerned, the same is not modified or cancelled by the higher court and even the same is not varied or vacated in terms of provisions of Section 127 of the Code of Criminal Procedure. Thus, the said order validly survives and the same is enforceable. The learned Principal Judge of the family court has rightly rejected the objection filed by the petitioner husband at Exh.8 in

Petition No. ER-275/2014. I do not find any fault with the impugned order. There is no substance in the criminal application.

10. In the result, the Criminal application is hereby rejected. No order as to costs.

(V. K. JADHAV, J.)

JPC