

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1119 OF 2016**

Seema Santosh Chipade & Ors.	...Petitioners
Versus	
Santosh Pralhad Chipade & Anr.	...Respondents

Mr. Sukand R. Kulkarni for the Petitioners

Mr. M. A. Patil with i/b Mr. S. B. Choudhari for the Respondent No.1

Ms. P. P. Shinde, A.P.P for the Respondent No.2-State

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 6th OCTOBER, 2016

P.C. :

1. Heard learned Counsel for the petitioners and the learned Counsel for the respondent No.1.

2. Rule. Rule is made returnable forthwith and is taken up for final disposal, by consent. Mr. Patil, learned Counsel waives notice for the respondent No. 1. Learned A.P.P waives notice for the respondent No. 2-State.

3. By this petition, the petitioners have impugned the order dated 19th January, 2016 passed by the learned Sessions Judge, Pune below Exhibit 5 in Criminal Appeal 638 of 2015, modifying clause No.4 of the order dated 14th February, 2014, passed by the learned Judicial Magistrate First Class, Link Court Room No. 8.

4. Learned Counsel for the petitioners submits that the respondent No. 1 has been trying to evade paying maintenance to the petitioner No. 1-wife and petitioner Nos. 2 and 3, aged 10 and 8 years. He submits that the petitioner Nos. 2 and 3 are studying in School and that their fees have to be paid, however, the respondent No. 1 is trying to evade making payment. He submits that the petitioner is in arrears of Rs. 15 lakhs odd. He submits that the petitioner No.1-wife is finding it extremely difficult to survive and make ends meet, because of the non-payment of maintenance by the respondent No. 1. Learned Counsel for the petitioners further submits that the respondent No. 1 has remarried and has one child.

5. Learned Counsel for the respondent No. 1 opposes the petition. He submits that the respondent No. 1 has paid a sum of Rs. 12 lakhs odd to

the petitioners so far. The same is seriously disputed by the learned Counsel for the petitioners. Learned Counsel for the respondent No. 1 states that the appeal is pending before the Additional Sessions Judge and in the said appeal, being Criminal Appeal No. 638 of 2015, an application was filed by the respondent No. 1, pursuant to which the impugned order has been passed. He submits that the learned Sessions Judge be directed to dispose of the said appeal expeditiously, instead of interfering in the impugned order.

6. Perused the papers. The case has a chequered history. It appears that the petitioners had filed a case in the Court of the learned Judicial Magistrate First Class, Pune, under the Domestic Violence Act. Vide judgment and order dated 14th February, 2014, the learned Judicial Magistrate First Class, Pune was pleased to allow the application of the petitioners. Vide clause No.4 of the impugned order, the learned Judge directed the respondent No. 1 to pay a sum of Rs. 20,000/- to the petitioner No. 1 and a sum of Rs. 10,000/- each to the petitioner Nos. 2 and 3 respectively, from the date of filing of the application i.e. from 20th September, 2011. Respondent No. 1 was also directed to pay compensatory

cost of Rs. 25,000/- and was also directed to pay a separate amount towards rent, where the petitioners were residing. The said judgment and order was challenged by the respondent No. 1 in appeal in the Sessions Court, being Criminal Appeal No. 152 of 2014. The learned Additional Sessions Judge, Pune, vide order dated 4th April, 2015, was pleased to dismiss the said appeal on merits. Being aggrieved by the aforesaid judgments and orders, the respondent No. 2 filed Criminal Writ Petition No. 2017 of 2015 in this Court. It appears that when the aforesaid Criminal Writ Petition No. 2017 of 2015 came up before this Court, distress warrant had been issued, as against the respondent No. 1. Accordingly, the following orders were passed in the said writ petition, being Writ Petition No. 2017 of 2015:

16th October, 2015

“Heard respective counsel.

2. *The learned counsel for the petitioner seeks time to take instructions as to whether the land which he is offering has been hypothecated/mortgaged or attached by any Bank.*

3. *S.O. to 21.10.2015.*

4. *The learned counsel for the respondent fairly submits that he would not proceed with the distress warrant till the next date.”*

Thereafter, on **21st October, 2015**, the following order was passed :

“The learned counsel for the petitioner submits that the petitioner has put in the best of his efforts to collect sufficient funds in order to be able to pay the arrears/school fees/rent. However, there is a Distress Warrant against him. He is not able to pool sufficient funds, to contact his relatives or to go to Satara. The learned counsel for the petitioner submits that the petitioner with great difficulty has been able to collect an amount of Rs.20,000/- which he will give to the respondent in cash today.

2. *The learned counsel for the petitioner, upon instructions also submits that in the eventuality that the Distress Warrant is stayed, he would approach the school authorities and request them to grant extension of time to pay the school fees within the limited period. The learned counsel, upon instructions, further submits that in the eventuality that the petitioner is granted time till 17.11.2015, he would be able to pool sufficient funds to pay the rent of the premises where the respondent is staying. It is only with this undertaking that the Distress Warrant is being stayed till 18.11.2015. In the meanwhile, if the petitioner is able to pool sufficient amount, he would deposit the school fees/rent and also pay to the respondent an amount to be enable her to survive through the proceedings.*

S.O. to 18.11.2015.

3. *Distress Warrant is stayed till 18.11.2015”.*

It appears that thereafter on 10th December, 2015, the following order was passed :

“Mentioned. Not on board. Taken up on production board due to urgency shown.

2. *Although by an earlier order dated 21102015 this Court had stayed the distress warrant, the petitioner did not deposit any amount in the meantime towards school fees, rent, etc., as ordered. The applicant apparently is taking advantage of the order passed by this Court. Therefore, the order dated 21-10-2015 is set aside. The applicant might now face the distress warrant.*

3. *List in due course.”*

7. It appears that despite giving assurances to this Court, that he would arrange for the monies, no efforts were taken by the respondent No. 1, to deposit any amount towards school fees, rent, etc. as was directed and for which, time was sought. On 21st October, 2015, the respondent No. 1 was granted time till 18th November, 2015. It appears that in the interregnum, the respondent No. 1 filed an appeal before the Sessions Court, being Criminal Appeal No. 638 of 2015 on 2nd November, 2015, despite the fact, that the said Writ Petition was pending in this Court. The filing of Criminal Appeal No. 638 of 2015 was also not disclosed to this Court. In the said appeal i.e. Criminal Appeal No. 638 of 2015, an application was filed, being Exhibit 5, praying therein, for stay of the order dated 14th February, 2014. The learned Additional Sessions Judge, Pune, was pleased to pass the following order dated 19th January, 2016 below

Exhibit 5 filed in Criminal Appeal No. 638 of 2016, which is impugned in this petition. The operative part of the order reads thus : -

“ORDER

- 1) *The application is partly allowed as under.*
- 2) *The execution and operation of clause no.4 of operative order passed by Judicial Magistrate First Class, Link Court no.8, Pune in Cri.Misc.Appln.no.1913/2011 dated 14/02/2014 is hereby modified as under during pendency of this appeal.*
 - a) *The appellant shall pay respondent no.1 Rs.10,000/- and respondent nos.2 and 3 Rs.5,000/- each per month during pendency of this appeal. This order shall be effective from the date of passing of the order by trial court i.e. on 14/02/2014 till conclusion of present appeal.*
 - b) *Rests of the operative order is kept as it is.*
- 3) *Accordingly, application stands disposed of.”*

8. Learned Counsel for the petitioner states that the appeal, infact, was clearly not maintainable in law and as such ought not to have been entertained by the learned Judge. He submitted that only to circumvent the directions given by this Court in Writ Petition No. 2017 of 2015, time was sought and an appeal was filed in the Sessions Court. He submitted that the second round of litigation in the Sessions Court was not maintainable, when

the Sessions Court had earlier dismissed the appeal, being Criminal Appeal No. 152 of 2014 filed by the respondent No. 1 and more particularly, when Writ Petition No. 2017 of 2015 was pending in this Court. *Prima facie*, it is doubtful, whether the appeal being Criminal Appeal No. 638 of 2015, is maintainable. However, it is not necessary to go into it at this juncture, considering the fact, that the said Criminal Appeal is pending before the learned Additional Sessions Judge.

9. In the peculiar facts and circumstances of the case, it appears that the respondent No. 1 is avoiding paying the maintenance as awarded. It also appears, that 4 to 5 distress warrants had to be issued, as the respondent No. 1 had failed to pay maintenance to the petitioners. *Prima facie*, it appears that the respondent No. 1 does not want to take the responsibility of his wife and children, as a result of which, the petitioners were constrained to file the aforesaid petition. Even today, the school fees of the petitioner Nos. 2 and 3 have not been paid.

10. Considering the facts of this case and the conduct of the respondent No. 1, the impugned order dated 19th January, 2016 passed by

the learned Sessions Judge, Pune, below Exhibit 5 in Criminal Appeal No. 638 of 2015, modifying Clause No. 4 of the condition of the judgment and order dated 14th February, 2014, passed by the trial Court, is quashed and set-aside.

11. The learned Sessions Judge is directed to decide the appeal on its own merits as expeditiously as possible and in any event, within four weeks from the date of receipt of this order.

12. Rule is made absolute on the aforesaid terms.

13. Petition is disposed of accordingly.

14. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.