

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.78 OF 2018

Rajendra s/o Kantilal Pardeshi,
Age : 55 years, Occu. Service,
Residing presently at Post
Galle-Borgaon, Taluka Khultabad,
Aurangabad

APPLICANT

VERSUS

Pushpa w/o Rajendra Pardeshi,
Age : 37 years, Occu. Household,
Residing at Quarter No.14,
Building No.3, Medical Quarters,
Government Medical Hospital (Ghati),
Aurangabad

RESPONDENT

Mr. Hemant Surve, Advocate for the applicant
None for the respondent

CORAM : SANGITRAO S. PATIL, J.

DATE : 19th JUNE, 2018

ORDER JUDGMENT :

Heard the learned counsel for the applicant.

2. The notice was issued to the respondent vide order dated 15th March, 2018 with a clear understanding that the Revision Application would be disposed of

finally at the stage of admission. As seen from the office note, the notice has been served on the respondent. However, none appeared for the respondent, when the Revision Application was called out. The Revision Application is taken up for final hearing.

3. The learned counsel for the applicant submits that the respondent had filed Criminal Misc. Application No.1180 of 2010 in the Court of Judicial Magistrate First Class (7th Court), Aurangabad on 14th September, 2012 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ("DV Act", for short), seeking reliefs under Sections 18, 19, 20, 21 and 22 of the said Act. The claim of the respondent for monetary reliefs under Section 20 of the Act came to be rejected as per the judgment and order dated 18th August, 2012. The respondent did not challenge that judgment and order. As such, it has attained finality. Thereafter, the respondent filed application for maintenance on behalf of the minor son namely Rohit and herself in the Family Court at Aurangabad, bearing No.E-104 of 2016 under Section 125 of the Code of Criminal Procedure ("Code", for short) on 26th April, 2016. She then filed application (Exh-32) for interim maintenance on 30th

December, 2017. It was strongly challenged by the applicant mainly on the ground that her application for maintenance filed before the learned Judicial Magistrate First Class was rejected on merits. However, the learned Judge of the Family Court, without considering the effect of the order passed by the learned Judicial Magistrate First Class rejecting the claim of the respondent for maintenance, directed the applicant to pay interim maintenance to the respondent at the rate of Rs.3000/- per month from the date of her application i.e. 30th December, 2017 until final decision of the main application. The learned counsel submits that once the claim of the respondent for maintenance has been rejected by the Court of competent jurisdiction, the learned Judge of the Family Court should not have granted interim maintenance in favour of the respondent. According to him, the impugned order, being illegal, may be quashed and set aside.

4. AS stated above, despite service of notice, the respondent did not appear before the Court to contest this Revision Application.

5. As seen from the judgment dated 18th August, 2012, passed in Criminal Misc. Application No.1180 of

2010 by the learned Judicial Magistrate First Class, the respondent had claimed maintenance at the rate of Rs.8000/- per month, on the allegation that the applicant illtreated, deserted and neglected to maintain her. The learned Magistrate framed specific points for determination and after considering the facts of the case as well as the evidence on record, recorded the findings that the respondent was not subjected to domestic violence and that she was not entitled to get any reliefs under Sections 18 to 22 of the DV Act. Ultimately, the learned Magistrate rejected the application to the extent of the claim made by the respondent.

6. The learned counsel for the applicant specifically contends that the order dated 18th August, 2012 has not been challenged by the respondent before the appellate forum. There is nothing on record to show that the said order has been modified by any other Court of competent jurisdiction. As such, it has become final.

7. The respondent filed application for maintenance under Section 125 of the Code on 26th April, 2016. There is nothing in her application to show that

there was any change in the circumstances, after the order dated 18th August, 2012 passed by the learned Judicial Magistrate First Class, entitling her to claim maintenance under Section 125 of the Code. In paragraph No.10 of the application, the respondent has referred to the order dated 18th August, 2012, whereunder maintenance at the rate of Rs.1300/- per month each was ordered to be paid to both of the sons of the respondent. However, there is no mention in that paragraph that the claim of the respondent for maintenance was rejected. Albeit, the fact remains that the claim of the respondent for maintenance was rejected by a Court of competent jurisdiction on merits, the order passed by that Court has attained finality and thereafter there is no change in the circumstances. On the face of that order, the learned Judge of the Family Court was not justified in directing the applicant to pay interim maintenance to the respondent at the rate of Rs.3000/- per month.

8. The learned Judge of the Family Court, in paragraph No.16 of the impugned order, refers to the proceeding under the provisions of DV Act, filed before the learned Judicial Magistrate, First Class and observes that the said proceedings were different than

the present proceedings i.e. under Section 125 of the Code and that the objectives thereof are different. With this reasoning, the learned Judge has granted the relief of interim maintenance. In my view, the said reasoning is not at all justifiable. In view of the order dated 18th August, 2012 passed by the learned Judicial Magistrate First Class, rejecting the claim of the respondent for maintenance, the learned Judge of the Family Court, at the most, should have taken up the main application filed by the respondent for expeditious hearing.

9. The impugned order is not legal, proper and correct. It is not sustainable. The Revision Application will have to be allowed. In the result, I pass the following order:-

ORDER

(A) The Criminal Revision Application is allowed.

(B) The order dated 12th January, 2018, passed by the Principal Judge, Family Court, Aurangabad in Petition No.E-104 of 2016, is quashed and set aside.

(C) The learned Principal Judge of the Family Court

shall decide the main application as expeditiously as possible, subject to any order of the High Court to the contrary.

(D) The Criminal Revision Application is accordingly disposed of.

[SANGITRAO S. PATIL]
JUDGE

npj/crirevn78-2018