

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4681 OF 2015

Chaitali Amit Salekar, Age 34 years,
Occ.Service, R/o.C/o.Nandkumar P. Bhujbal,
19/151, Maharshi Nagar, Gultekdi,
Market Yard, Pune-37.

Petitioner

versus

1. Amit Vishwaratna Salekar, Age 36 years,
Occ.Business, R/o.Building No.D-3,
Flat No.203, Phase-1, Market Yard,
Pune-410 037.

2. The State of Maharashtra

Respondents

WITH
CRIMINAL APPEAL (STAMP) NO.1060 OF 2015
WITH
CRIMINAL APPLICATION NO.1432 OF 2015
AND
CRIMINAL APPLICATION NO.1043 OF 2016

Chaitali Amit Salekar, Age 34 years,
Occ.Service, R/o.C/o.Nandkumar P. Bhujbal,
19/151, Maharshi Nagar, Gultekdi,
Market Yard, Pune-37.

Appellant

versus

1. Amit Vishwaratna Salekar, Age 36 years,
Occ.Business, R/o.Building No.D-3,
Flat No.203, Phase-1, Market Yard,
Pune-410 037.

2. The State of Maharashtra

Respondents

Mr.Sudhir V. Sadavarte for petitioner/Appellant.
Mr.A.B.Patil for respondent no.1 in both matters.
Mr.A.R.Patil, APP, for State in both matters.

CORAM : PRAKASH D. NAIK, J.

DATE : 11th July 2018

PC :

1. In view of the directions from the Hon'ble Chief Justice, both the matters were clubbed together and were placed before Court taking criminal writ petition as per roster. In view of that, both the matters were placed before this Court.

2. Heard both sides for final disposal. Writ Petition No.4681 of 2015 is preferred against the order dated 23rd October 2015 passed below Exhibit-55 in P.A.No.721 of 2013 passed by the learned Family Court No.2, Pune. Whereas, Criminal Appeal (Stamp) No.1060 of 2015 is preferred challenging the order dated 13th August 2015 passed by Family Court No.2, Pune below Exhibit-40 in PA No.721 of 2013.

3. The petitioner/appellant is the original applicant who has filed PA No.721 of 2013 against respondent no.1 u/s 13(1)(i-a) of Hindu Marriage Act, 1956 contending that their marriage took place on 13th February 2007 and registered on the same date as per Hindu rites at Pune. After the said wedlock, a daughter was born on 29th November 2012. In the said proceedings, it was alleged by the petitioner that the respondent no.1 used to come late at night being heavily drunk and used to cause mental as well as physical cruelty to the petitioner. On account of the alleged harassment caused to the petitioner/appellant, she filed the said proceedings for dissolution of marriage and maintenance on 21st June 2013. The petitioner filed

application below Exhibit-15 in the aforesaid PA No.721 of 2013 u/s 24 of Hindu Marriage Act seeking interim maintenance of Rs.40,000/- for herself and Rs.20,000/- for the child on 14th February 2014. The Court after hearing the parties was pleased to pass an order on 16th January 2015 allowing the said application and directing the respondent no.1 to pay Rs.3,000/-p.m. to the petitioner and Rs.5,000/- p.m. to the minor daughter from the date of the order. On 6th May 2015, the Court passed order striking off the defence of respondent no.1. It was recorded that respondent is refusing to pay interim maintenance as petitioner is not allowing him to avail access to the child. This is no ground for disobeying the order of the Court to pay interim maintenance. Defense was struck off until he pays at least 50% of arrears.

4. The respondent no.1 thereafter filed an application before the Family Court stating that the application for maintenance was filed for harassment. It was contended that the petitioner is working since 25th November 2013 and getting salary of Rs.8.20 lakh per annum and the said fact is suppressed by her from the Trial Court. The respondent no.1 therefore sought recalling of the order dated 6th May 2015. By order dated 6th July 2015 the Family Court directed the petitioner to file reply. She was also directed to file her affidavit about her service, income from last three years, bank account statement, her salary account and details of her properties-movable and immovable, and assets and liabilities. On the same day i.e. on 6th July 2015, the Family Court passed another order issuing show cause notice to the petitioner to show cause why the petition be not dismissed for violating order 39, Rule 11 of Code of Civil Procedure, 1908. In the said order it was observed that during the course of

cross examination, it was revealed that petitioner is employed since 2016 and that she is getting pay package of Rs.8.20 lakh per annum. This package was not disclosed to Court while applying for interim maintenance for herself and for her daughter. On the contrary, interim maintenance order is obtained by misguiding the Court. Considering her statement on oath during cross-examination, the interim maintenance order was kept in abeyance till further orders. It was also observed that no recovery will be carried out on the basis of the order. The petitioner was called out to explain why perjury proceedings should not be initiated against her for misguiding the Court and suppressing her income from the Court. She was also called upon to explain why contempt of Court proceedings should not be initiated against her for obtaining order by making false statement in the Court. The interim order of maintenance was kept in abeyance.

5. On 13th August 2015 the Family Court heard the application preferred by respondent no.1 vide Exhibit-40 in PA No.721 of 2013. The respondent no.1 had prayed for setting aside the order dated 6th May 2015 which orders striking of his defence. The reply was filed to the said application. The Court by order dated 13th August 2015 allowed the said application. The order of striking of defence dated 6th May 2015 was set aside and the defence was taken on record. The Court further proceeded to direct the Deputy Registrar of Family Court, Pune, to file an appropriate complaint before the competent Judicial Magistrate, First Class, Pune against the petitioner for committing perjury and making false statement on oath before the Court. The petitioner had filed her affidavit along with Exhibit-53 and affidavits of relatives. She had also filed various documents

pertaining to her income and SMS correspondence as well as police complaint. The Court deprecated the conduct of petitioner/applicant and passed the aforesaid order by stating several reasons. The Court observed that prima facie there is sufficient record to indicate that the petitioner has committed an offence u/s 193 of IPC of making a false statement before the Court on oath. Therefore, the hearing is treated as hearing u/s 340 of Cr.P.C and appropriate directions are given to the registry to file complaint against the petitioner for committing perjury.

6. Thereafter the petitioner preferred Review Application before the said Court. In the said application it was contended that at the time of filing the main petition on 21st June 2013, application u/s 24 of Hindu Marriage Act, 1955 for maintenance pendent lite and expenses of proceedings was also kept ready for to be filed. At the time of filing application u/s 24 of the said Act, on 14th February 2014, the petitioner was informed that the application is replica of the said application, which was to be filed at the time of institution and presentation of main application dated.21st June 2013 and hence the petitioner who had no job, no salary and no source of income on 21st June 2013, misunderstood the situation and signed the application dated.14th February 2014 along with affidavit. The petitioner has no legal education background and being layman, she innocently misunderstood everything and signed the said application and affidavit dated 14th February 2014 as directed by her lawyer. It was also contended that the respondent no.1 has also suppressed material facts from the Court pertaining to his employment. This can be proved only after his evidence including cross-examination is recorded. It was submitted that the action for alleged perjury

initiated by the Family Court is pre-mature as even complete evidence of the petitioner could not be recorded. Her cross-examination was adjourned by the Court till further orders on 6th July 2015 and after recording one paragraph. It was stated that after recording evidence of the petitioner and her witnesses and respondent no.1 and his witnesses, action for alleged perjury could be initiated. In view of the order passed below Exhibit-40 dated 13th August 2015 against her for perjury, petitioner apprehends that trial in the proceedings will not be free from tension and pressure on her. It was therefore prayed that the execution, implementation and operation of the order passed below Exhibit-40, dated 14th August 2015 be reviewed and recalled. The respondent no.1 filed reply vide Exhibit-58 and objected for granting the said application. The said application was rejected by order 23rd October 2015 with costs of Rs.10,000/-. The Court again criticized the conduct of the petitioner while rejecting the said application.

7. The petitioner thus preferred Criminal Writ Petition No.4681 of 2015 and an appeal which is numbered as Criminal Appeal (Stamp) No.1060 of 2015 challenging aforesaid orders. Since there was a delay in preferring the said appeal, separate application is preferred for condonation of delay. Criminal Application No.1043 of 2015 and Criminal Appeal (Stamp) No.1060 of 2015 came up for hearing before this Court on 20th November 2015. This Court after hearing the advocate for the applicant/ petitioner/appellant, passed the following order :

- “1. Not on board. Upon production, taken on board.*
- 2. Issue notice to the Respondents, returnable on 11 December 2015.*

3. *In addition to usual mode of service, the Applicant to effect private service and file affidavit of service. Hamdast allowed.*

4. *Mr.Sadavarte, the learned counsel for the applicant on basis of instructions from the Applicant makes a statement that the Applicant will not claim any maintenance during the pendency of PA No.721 of 2013. In any case, the order granting maintenance in favour of the Applicant has already been recalled according to the instructions imparted to the learned counsel appearing for the Applicant. In any case, it is now made clear that the Applicant shall not insist upon any maintenance during the pendency of PA No.721 of 2013.*

5. *In view of the aforesaid, there shall be interim relief in terms of prayer clause (c) till the next date.”*

Thereafter interim order was extended from time to time. At the instance of the petitioner, a praecipe was moved for clubbing the appeal and writ petition and for hearing the said matters by one Court. The directions were issued for clubbing both the matters and for placing the same before the Court taking criminal writ petitions as per roster. In view of that, both the matters were placed before the Court from time to time hearing criminal writ petitions.

8. For the reasons stated in Criminal Application No.1432 of 2015, the delay in preferring Criminal Appeal (Stamp) No.1060 of 2015 is condoned. The petitioner/appellant has filed affidavit dated 17th April 2018 in this Court. In the said affidavit it is stated that this Court on the statement of the petitioner that she will not claim any maintenance during the pendency of PA No.721 of 2013 granted interim relief and stayed impugned order dated 13th August 2015. During the pendency of these proceedings, PA No.721 of 2013 came

to be decreed by judgment and order dated 16th May 2017 and the marriage between the parties has been dissolved by decree of divorce u/s 13(1)(i-a) of Hindu Marriage Act, 1955. It is also stated that against the decree of divorce, no appeal has been preferred by the respondent no.1 husband till date. It is further stated that even though no maintenance or permanent alimony is granted by the Trial Court, she has not preferred any appeal against the same. The Trial Court had granted maintenance of Rs.5,000/- p.m. to minor daughter during pendency of PA No.721 of 2013, the respondent no.1 is directed to pay permanent alimony of Rs.5,000/- p.m. for the daughter u/s 26 of Hindu Marriage Act, 1955. It is also stated that despite the orders, the respondent no.1 has not paid maintenance granted to daughter regularly and presently he is in arrears of Rs.2.55 lakhs. It is further stated that inadvertently she made incorrect statement in her application u/s 24 of Hindu Marriage Act, 1955 for grant of interim maintenance by stating that she has no source of income. It is stated that all other statements, except her source of income in paragraph 6 of the said application, are true and correct. She further stated that she is not blaming anybody for the said wrong statement about no source of income. She had no ill-intention while filing the said application. She also tendered unconditional apology for the said incorrect statement with regard to her source of income in paragraph 6 of the application filed below Exhibit-15 in PA No.721 of 2013. She tendered unconditional apology for the inconvenience caused to the Court. It is stated that her unconditional apology be accepted and the impugned order dated 13th August 2015 passed below Exhibit-40 in PA No.721 of 2013 be set aside.

9. Learned counsel for the petitioner/appellant submitted that the unconditional apology tendered by the appellant/petitioner be considered. He also submitted the circumstances in which the application was filed wherein the statement regarding no source of income was made. Learned advocate for respondent no.1, however, submitted that by tendering unconditional apology, the petitioner/appellant cannot be absolved of the statement made by her in the proceedings before the Family Court.

10. In the main plaint preferred by the petitioner it was stated that at the time of marriage she was Bachelor of Engineering and was working in IT company. In paragraph 12 of the said application it was stated that the respondent no.1 had purchased the car out of her income and that she had spent about Rs.20,000/- for repairing the car which was in possession of the respondent no.1. In para 14 it was stated that she had spent about Rs.40,000/- from her salary for paying the medical expenses. In para 16 it has been stated that she spent about Rs.2,00,000/- and travelled to London to join the respondent no.1. She has also spent Rs.4,66,000/- for medical expenses. During her cross-examination she admitted that prior to the marriage, she was working for about one year and after the marriage, during the year 2006, she was drawing a salary of Rs.12,000/- p.m. She further admitted in her cross that after the marriage, she has worked in three different companies and presently she is employed in E-Zest company at Kothrud in Pune as a software engineer. She also admitted that during the current year, she has a yearly package of Rs.8.20 lakhs and draws monthly salary of Rs.50,000/-. She further admitted that while she filed an application

for maintenance, she has pleaded therein that she is unable to maintain herself. She filed an affidavit pursuant to show cause notice issued by the court for perjury and in the said affidavit it was stated that at the time of filing application PA No.721 of 2013, she was not in employment anywhere. However, during the pendency of these proceedings in the Court, she joined E-Zest company since 25th November 2013 on an annual package of Rs.8,20 lakhs. Apparently in para 6 of the application for interim maintenance, Exhibit-15, it was stated that she is residing at her parental home along with daughter and she has no source of income. The said application was filed on 14th February 2014. The explanation tendered by the petitioner/appellant pursuant to show cause notice was not accepted by the Court. Subsequently she has admitted that she was employed at that point of time. While passing order dated 20th November 2015, the statement of the petitioner/appellant was recorded through her advocate wherein it was stated that the petitioner will not claim any maintenance during pendency of PA No.721 of 2013. The Court by order dated 20th November 2015 observed that the order granting maintenance in favour of the petitioner has already been recalled by the Court. Since the statement is made by the petitioner that she will not insist upon any maintenance during the pendency of PA No.721 of 2013, the Court proceeded to grant interim relief and stayed the proceedings of perjury before the Lower Court. The petitioner has also tendered the affidavit wherein, as stated above, she has tendered apology and has stated that inadvertently the incorrect statement was made in her application u/s 24 of Hindu Marriage Act, 1955 for grant of interim maintenance, that she has no source of income. The Trial Court had granted maintenance of Rs.5,000/- p.m. to minor daughter during

pendency of PA No.721 of 2013 and the respondent no.1 was directed to pay permanent alimony to the daughter u/s 26 of Hindu Marriage Act, 1955. The proceedings initiated vide PA No.721 of 2013 came to be decreed by judgment and order dated 16th May 2017 and the marriage between both the parties has been dissolved by passing decree of divorce u/s 13(1)(i-a) of Hindu Marriage Act, 1955.

11. Taking into consideration the circumstances as referred to hereinabove, the affidavit filed by the appellant/petitioner, and considering the nature of relationship and proceedings between both the parties and the current status of the relationship between the petitioner and respondent no.1 and in view of the apology tendered by the petitioner/appellant, the proceedings initiated vide order dated 13th August 2015 are quashed and set aside. Hence, I pass following order :

ORDER

- (i) Criminal Appeal (Stamp) No.1060 of 2015 is allowed;
- (ii) Impugned order dated 13th August 2015 passed below Exhibit-40 in P.A.No.721 of 2013 by learned Judge, Family Court no.2, Pune and the order dated 23rd October 2015 passed by Family Court No.2, Pune are set aside;
- (iii) Criminal Application No.1043 of 2016 is allowed and stands disposed of;

- (iv) Criminal Writ Petition No.4681 of 2015 stands disposed off;
- (v) Criminal Application No.1432 of 2015 is disposed of in view of disposal of Criminal Appeal.

(PRAKASH D. NAIK, J.)

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