

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Criminal Revision No.116 of 2018

(Vishal Prakashrao Selukar .vs. Sau. Rupali Vishal Selukar and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. R.T. Anthony, Advocate for Applicant.
Mr. A.C. Mahakale, Advocate for Respondents.

CORAM : NITIN W. SAMBRE, J.
DATED : AUGUST 28, 2018.

Heard respective counsel.

2. Vide order dated 17.03.2017 passed by the Family Court, Nagpur, in proceedings No. E-4 of 2016, interim maintenance of Rs.3000/- to the respondent no.1-wife and Rs.1000/- to the respondent no.2-daughter came to be awarded from the date of filing of application on 4.1.2016.

3. In the said proceedings, parties to the present application filed a pursis on 24.05.2017 settling the dispute amicably. The respondent-wife has in categorical terms stated that nothing is due towards maintenance from the present applicant. Consequently Misc. Criminal Application No. E-4 of 2016 came to disposed of as withdrawn on 24.05.2017.

4. The parties are in agreement that after the aforesaid development, the parties were reunited and stayed together for a period of two months. However, again differences erupted in between them and as such the respondent-wife took out an application for recovery of balance maintenance of Rs.96,000/- on 1.1.2018,

which was objected by the present applicant - original non-applicant before the Family Court by filing reply.

5. Instead of dealing with the contentions raised in reply of the present applicant, it appears that the Family Court passed impugned order dated 10.05.2018 issuing distress warrant against the present applicant for an amount of Rs.68,000/-.

6. It is the contention of the present applicant that the developments referred supra viz. final disposal of the application for maintenance as withdrawn and the pursis filed by the respondent-wife that nothing is due and payable by the present applicant are not considered and dealt with in the order impugned. According to him, the order impugned as such is not sustainable.

7. Per contra, the learned counsel for the respondent-wife would urge that considering the object of enacting the provisions of Section 125 of the Cr.P.C., order impugned passed by the Family Court does not warrant any interference and the present application needs to be rejected. He would also urge that the settlement between the parties since was not taken to its logical end, the respondent-wife has every right to claim maintenance.

8. Considered rival submissions. It is not in dispute that the parties to the present application on 24.05.2017 filed a pursis and thereafter the application on which the order of payment of maintenance was passed came to be withdrawn on 24.05.2017.

9. The effect of contents of the pursis and also that of order of withdrawal of the proceedings though was within the knowledge of the Family Court, the Family

Court appears to have not dealt with it and has issued the warrant against the present applicant. The fact remains that when the aforesaid events in the form of factual matrix are part of the proceedings pending before the Family Court, the least that was expected of the Family Court is to consider the same, apply its mind and pass an appropriate order.

10. Without going into the merits of the matter, in my opinion, it will be appropriate to quash the order impugned dated 10.05.2018 with liberty to the parties to appear before the Family Court on 04.09.2018, the date on which the parties agree that they shall argue the matter on the issue of the maintainability of the application for recovery of amount of maintenance in a withdrawn proceedings in addition to other issues. The Family Court is expected of to deal with the arguments of the parties particularly the issue of withdrawal of the maintenance proceedings and the entitlement of the respondent-wife to the maintenance.

11. The revision as such stands partly allowed in above terms.

JUDGE

Rajendra
Gajananrao
Halwai

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by Rajendra
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2018.08.30
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