

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 3737 of 2018

Arjun Sahadhu Bangar .. Petitioner
Versus
The State of Maharashtra & ors .. Respondents

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Mrs.Kanchan S. Kambli for the petitioner.

Mr.Deepak Thakare, P.P with Ms.Sangita Shinde, APP for the State.

Mr.N.R. Bubna for respondent no.3.

**CORAM: SHRI RANJIT MORE &
SMT. BHARATI H.DANGRE, JJ.**

DATED : 31st JULY 2019

P.C:-

1 Heard learned counsel for the respective parties.

2 The petitioner and respondent no.3 are husband and wife. Due to matrimonial discord between them, respondent no.3 approached the Judicial Magistrate First Class at Thane and filed Application No.11 of 2017 against the petitioner under the Domestic Violence Act for the various reliefs.

3 During the pendency of the aforesaid D.V. Proceedings, the petitioner agreed to pay to the respondent no.3 and her son an amount of Rs.20,000/- and Rs.5,000/-

Tilak

respectively per month. As a matter of fact, the petitioner paid to the respondent and her son an amount @ Rs.25,000/- for the period between January 2017 to May 2018.

4 The DV proceedings were placed before the learned JMFC, Thane on 30th March 2017. On that day, the learned Presiding Officer, in exercise of powers under Section 89 of the Code of Civil Procedure sent the matter for mediation for settlement between the parties. This order came to be passed by consent of the parties.

5 It is the case of respondent no.3 that on the very same day i.e. 30th March 2017, parties arrived at a compromise and accordingly, consent terms were prepared and same were filed in the DV proceedings at Exhibit-8. The consent terms are signed by herself, petitioner along with respective counsel. Subsequent thereto, the Mediator sent a report to the concerned Court on 1st April 2017 that Mediation has succeeded. Thereafter, on 22nd April 2018, matter was paced before the Lok Adalat. On that day, compromise between the parties were given. On the very same day, respondent no.3 applied for withdrawal of the DV proceedings. The learned Judge passed an order allowing respondent no.3 to withdraw the DV proceedings in view of the settlement at Exhibit-8. The present petitioner thereafter approached this Court solely on the ground that he was not aware of the settlement between

himself and respondent no.3, he has not signed on the Consent Terms dated 30th March 2017, he was not present before the Lok Adalat on 22nd April 2018. It is the contention of the petitioner that for the first time, he came to know about the said compromise when he received letter from Assistant Commissioner of Police in April 2018. In these circumstances, petitioner has approached this Court for various reliefs, including setting aside the said Consent terms between the parties.

6 With the assistance of learned counsel for the parties, we have gone through the record and the orders/compromise referred to in the above paragraph. We have perused the record. From the record, it reveals that the petitioner and his lawyer signed the Consent Terms at Exhibit-8. However, the petitioner now strongly contends that he was not present on that date before the Court and for that purpose, he relies upon the certificate at page no.80 by the Assistant Commissioner of Police, Wireless Department. The said certificate shows that petitioner was on duty on 30th March 2017 at Wireless Department of Thane office.

What is important is that Mr.Bubna, learned counsel for respondent no.3 does not dispute that petitioner or his counsel was not present before the Lok Adalat on 22nd April 2018 under Section 19(5) of the Legal Services Act, 1987 (Lok Adalat). It is the function of the Lok Adalat to determine and to

arrive at a compromise between the parties. Under clause (4) of Section 20 of the said Act, every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity fair play and other legal principles. This provision makes is abundantly clear that while recording the compromise between the parties, it is obligatory on the part of Lok Adalat to follow the principles of natural justice. Admittedly, the petitioner or his counsel was not present before the Lok Adalat on 24th April 2018 on which date, the compromise between the parties was recorded in terms of the consent terms and thereafter, the Head of the Panel and Judicial Magistrate First Class allowed the respondent no.3 to withdraw the DV proceedings in terms of the consent terms. In our considered view, for non-observance of principles of natural justice, order of the Lok Adalat cannot stand sustain. The order passed by the Head of the Panel and Judicial Magistrate First Class on 22nd April 2018 also therefore cannot be sustained and therefore, we quash and set aside the order dated 22nd April 2018 passed by the Head of the Panel and JMFC, Thane, below Miscellaneous Application No.11 of 2017.

7 We accordingly restore the DV proceedings. We direct the learned Magistrate to dispose of the said proceedings on its own merits in accordance with law.

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8 At this stage, Mr.Bubna, learned counsel for respondent no.3 submits that since the impugned order is set aside, now the petitioner must continue to pay maintenance as he was paying prior to the said order. Learned counsel for the petitioner, having taken instructions from the petitioner, who is present in the Court, makes a statement that petitioner is ready and willing to pay to the respondent no.3 and her son an amount of Rs.25,000/- per month. Petitioner has already paid an amount of maintenance between January 2017 to May 2018. The amount of maintenance for the period between June 2018 to February 2019 is deposited in this Court on 5th March 2019.

9 We grant liberty to respondent no.3 to withdraw an amount of Rs.2,25,000/- (Rupees Two Lakhs twenty five thousand) deposited by the petitioner in this Court towards her and her son's maintenance. We further accept the statement of the petitioner that he will continue to pay maintenance to the respondent no.3 and her son @ Rs.25,000/- per month from March 2019. The arrears shall be paid within a period of eight weeks from today.

With the aforesaid direction, Writ Petition is disposed off.

(SMT. BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)