

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION NO. 510 OF 2019

Vinesh Labhshankar Joshi & Anr. ... Applicants

V/s.

Sangeeta Labhshankar Joshi & Anr. ... Respondents

Mr. S. R. Gaud for the Applicant.

Mr. A.A. Palkar, APP for the Respondent/State.

Mr. Aarif Ali M. Ali for the Respondent No.1.

CORAM: PRITHVIRAJ K. CHAVAN, J.
RESERVED ON : 08TH JANUARY 2020
PRONOUNCED ON : 20th JANUARY 2020

P.C.

1. Legality, propriety and correctness of the judgment and order dated 13.08.2019 passed by the Additional Sessions Judge, Mumbai in Criminal Appeal No. 187 of 2019 has been questioned by the Applicants.

2. Facts absolutely germane for the disposal of this Revision can be summarized thus:

3. Applicants and Respondent No.1 are brothers and sister. Respondent No.1 is unmarried. She filed an application under the provisions of the protection of women from Domestic Violence Act seeking several reliefs before the Chief

Metropolitan Magistrate, Mazgaon. By an order dated 13.12.2013, the learned Additional Chief Metropolitan Magistrate, 2nd Court, Mazgaon granted interim maintenance to Respondent No.1 @ Rs. 20,000/- per month. Subsequently, this Court in a Writ Petition No. 4402 of 2014 filed by the Applicants challenging the said interim order modified the interim maintenance amount to the tune of Rs.10,000/- per month by an order dated 19.12.2014.

4. On 26.09.2017, Applicants withdrew Writ Petition No. 4402 of 2014 which came to be disposed of stating therein that Counsel for both the parties were present and the Petitioners sought withdrawal of the petition which came to be disposed of. It is stated that in view of disposal of the Writ Petition, Petitioners' application, if any, also stood disposed of.

5. On 11.02.2019, a notice came to be issued by this Court in another Criminal Writ Petition No. 730 of 2019 filed by Applicant No.1 seeking clarification as regards the quantum of maintenance thereby challenging the order of the Trial Court. On 13.08.2019, the learned Additional Sessions Judge by the impugned order directed the Applicants to pay the maintenance @ Rs.20,000/- per month from the date of application.

6. Heard Mr. S. R. Gaud, the learned Counsel for the Applicants and Mr. Aarif Ali for the Respondent No.1.

7. At the outset, it is contended by the learned Counsel for the Applicants that impugned order has been passed in total ignorance of object and the welfare provided to aggrieved women inasmuch as, the learned Court has failed to appreciate that the Respondent No.1 has an independent source of income. The impugned order has also been assailed on the ground that learned Court has failed to appreciate the pendency of an identical petition before this Court seeking clarification on the issue whether the Applicants have to comply with the order dated 13.12.2013 from the date of application or from the date of order as directed by the learned Magistrate vide order dated 22.01.2019 and therefore, interference in the impugned judgment is essential.

8. On the other hand, the learned Counsel for the Respondent No.1 supported the impugned judgment and order by placing reliance on a judgment of Hon'ble Supreme Court in case of ***Kalabharati Advertising v/s. Hemant Vimalnath***

Narichania¹.

9. I shall deal with the ratio laid down in the said judgment in the subsequent paragraphs. The learned Counsel for the Respondent No.1 drew my attention to an order dated 13.12.2013 wherein the learned Additional Chief Metropolitan Magistrate, 2nd Court, Mazgaon, Mumbai has elaborately discussed as to how Respondent No.1 had been subjected to domestic violence by the Applicants *inter alia* as to how she is entitled for interim maintenance in the light of the fact that the Applicants from the joint family property, have been receiving huge income in which Respondent No.1 has a legitimate share.

10. The learned Counsel for Respondent No.1 has also drew my attention to paragraph 20 of an order passed by the learned Additional Sessions Judge, Greater Mumbai in Criminal Appeal No. 21 of 2014 wherein it has been specifically observed that Respondent No.1 has no source of income, whereas the Applicants have sufficient income which they receive from various sources including rent from the tenants of “Joshi building”. It is also observed that the Applicants get an income of Rs.1 lakh per month and therefore, Respondent No.1 is

¹ LAWS(SC)-2010-9-41

rightly entitled to claim Rs.20,000/- per month as an interim maintenance.

11. At the outset, the impugned judgment and order dated 13.08.2019 passed by the Additional Sessions Judge, Mumbai in Criminal Appeal No. 187 of 2019 arose while challenging an order dated 22.01.2019 below Exh. 72 passed by Additional Chief Metropolitan Magistrate, 2nd Court, Mazgaon, Mumbai in CC/DV/2013 by which Applicant No.2 was directed to clear the arrears of ad-interim maintenance @ Rs.20,000/- per month from the date of passing of the said order till the stay was granted by this Court and thereafter, when the petition was disposed of. The order dated 22.01.2019 passed by the Additional Chief Metropolitan Magistrate is an interlocutory order against which the impugned judgment and order came to be passed by the Additional District Judge and therefore, necessarily, it being an interlocutory order, no revision would lie. The order dated 22.01.2019 is correct, proper and legal.

12. In Criminal Writ Petition No. 4402 of 2014, the Applicants had challenged the ad-interim order passed by the Additional Chief Metropolitan Magistrate dated 13.12.2013 consequent to which this Court by an order dated 19.12.2014

modified the interim order to the extent of Rs.10,000/- per month, *inter alia* directing the Applicants to pay the arrears of maintenance. When the said Writ Petition No. 4402 of 2014 was withdrawn by the Applicants without seeking any clarification about the modified order passed by the Court on 19.12.2014, the petition was disposed of on 26.09.2017 *inter alia* disposing all the pending applications.

13. As a matter of fact, the Applicants now cannot derive any benefit from the interim order which has merged into the final order passed by this Court when the petition was disposed of as withdrawn by the Applicants. The interim orders passed earlier stood nullified automatically. The Applicants now cannot allow to take benefit of the interim order passed by this Court as the Applicants unconditionally withdrew Writ Petition No. 4402 of 2014. In case of Kalabharati Advertising (supra), the Hon'ble Supreme Court in paragraphs 15 and 32 clarified this aspect, which read thus:

“15. No litigant can derive any benefit from the mere pendency of a case in a Court of Law, as the interim order always merges into the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting an interim

order and thereafter blame the Court. The fact that the case is found, ultimately, devoid of any merit, or the party withdrew the writ petition, shows that a frivolous writ petition had been filed. The maxim "*Actus Curiae neminem gravabit*", which means that the act of the Court shall prejudice no-one, becomes applicable in such a case. In such a situation the Court is under an obligation to undo the wrong done to a party by the act of the Court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a party by the delayed action of the Court. (vide: *Dr. A.R. Sircar v. State of Uttar Pradesh & Ors.*, 1993 Supp. (2) SCC 734; *Shiv Shanker & Ors. v. Board of Directors, Uttar Pradesh State Road Transport Corporation & Anr.*, 1995 Supp. (2) SCC 726; the *Committee of Management, Arya Inter College, Arya Nagar, Kanpur & Anr. v. Sree Kumar Tiwary & Anr.*, AIR 1997 SC 3071; *GTC Industries Ltd. v. Union of India & Ors.*, AIR 1998 SC 1566; and *Jaipur Municipal Corporation v. C.L. Mishra*, (2005) 8 SCC 423).

32. "Withdrawal" means "to go away or retire from the field of battle or any contest." Thus, the word 'withdrawal' is indicative of the voluntary and conscious decision of a person. Therefore, if the said writ petitioners (respondent Nos. 1 to 5) have voluntarily abandoned their claim withdrawing the said writ petition, they cannot be permitted to take any benefit of the orders passed by the High Court or the statutory authority in pursuance thereof. Once the foundation is removed, the super-structure is bound to fall. Interim relief is granted only in aid of and as ancillary to the main relief which may be available to the party at the time of final adjudication of the case by the court. In case the orders passed by the High Court and, consequently,

by the Corporation are accepted to be in effect even today, it would be tantamount to allowing the writ petition without any adjudication on the issues involved therein. After obtaining interim relief, a party cannot avoid final adjudication of the dispute on merit and claim that he would enjoy the fruits of interim relief even after withdrawal/dismissal of the case. Law certainly would not permit such a course. Respondent No.1 is a practising advocate. He is not a layman, nor it can be assumed that he could not understand the consequences of withdrawal of the writ petition. Therefore, all orders passed by the High Court and the statutory authority stood washed away on withdrawal of the said writ petition and the said writ petitioners cannot claim any benefit of either of the same.”

14. As such, it is quite clear that in the given sets of facts and circumstances, under the garb of pendency of another Criminal Writ Petition No. 730 of 2019, the Applicant now cannot ask for clarification, more particularly, in view of the fact that there is no copy of Writ Petition No. 730 of 2019 tendered on record to ascertain as to what relief has been claimed in the said petition. Cleverly, what has been filed on record **Exhibit – H** is only the first order passed by this Court (Coram : Mrs. Mridula Bhatkar, J) on 11.02.2019, wherein this Court issued notice to Respondent No.1 without granting any interim relief. Why the copy of said Writ Petition has not been filed is better known to the Applicants themselves. It seems that the Applicants are

trying to seek some relief in camouflage, which cannot be permitted.

15. The learned Counsel for Respondent No.1 has rightly contended that delaying tactics are being played by the Applicants, which is evident from an application moved by them before the 2nd Additional Chief Metropolitan Magistrate in CC No. 13/DV/2013. The title of which reads thus:

*“APPLICATION OF RESPONDENTS
FOR NOT TO PROCEED IN THE
MATTER IN VIEW OF PENDENCY OF
PETITION BEFORE HON’BLE HIGH
COURT THEREBY CHALLENGING THE
ORDER OF THIS HON’BLE COURT.”*

16. Learned Additional Chief Metropolitan Magistrate has, therefore, rightly rejected the said application by passing a reasoned order.

17. Upshot of the aforesaid discussion is that the revision application is devoid of merits and hence, stands dismissed.

(PRITHVIRAJ K. CHAVAN,J.)