

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Proceedings through Video Conferencing

CRR No. 144 of 2021

- Makbul Khan S/o Hamid Khanm Aged About 32 Years R/o Near Masjid Kota, Thana Sarasvati Nagar, Raipur , District Raipur CG

---- Applicant

Versus

1. Smt. Anisha Paraveen W/o Makbul Khan Aged About 29 Years R/o Lakhagarh, Pithaura, Districst Mahasamund CG
2. Kumari Aliya Khan D/o Shri Makbul Khan Aged About 7 Years Minor Through Her Mother Smt. Anisha Paraveen W/o Makbul Khan, At Present R/o Lakhagarh, Pithaura, Thana Pithaura, District Mahasamund CG

---- Non-applicants

 For Applicant : Shri Bharat Rajput, Adv.
 For non-applicants : None appears.

Hon'ble Shri Justice N.K. Chandravanshi
Order On Board

16-6-2021

1. This criminal revision has been filed against the order dated 30-11-2019 passed by the Family Court, Mahasamund, Distt. Mahasamund in MJC (Cr.) No. F-81/2019 (Smt. Anisha Parveen and anr. -v- Makbul Khan) wherein the application of preliminary objection filed by the applicant has been rejected.
2. Brief facts of this case are that the non-applicants have filed an application under Section 125(3) of the Criminal Procedure Code, 1973 (in short 'Cr.P.C.') for payment/ recovery of maintenance amount of Rs. 1,12,500/- on execution of order dated 31-10-2015 passed by the Family Court, Mahasamund in MJC (Cr.) No. 66/2015 whereby maintenance amount of Rs. 1,500/- and Rs. 1,000/- was awarded in favour of the non-applicants and against the

applicant. The application has been registered as MJC (Cr.) No. F-81/2019 by the Court below. After appearing in that case, the applicant filed an application as preliminary objection that on 27-12-2016, deed of Talaknama and compromise had been executed between the non-applicant No. 1 and the applicant in presence of their relatives. In view of that Talaknama and compromise, the execution filed earlier under Section 125(3) of the Cr.P.C. by the non-applicant No. 1 was dismissed because of her absence. About two years later, the non-applicant No. 1 had again filed execution application under Section 125(3) of the Cr.P.C. by violating the Talaknama and compromise arrived at between them. Therefore, the applicant requested by filing preliminary objection that in view of the divorce and compromise arrived at between them, subsequent execution application under Section 125(3) of the Cr.P.C. filed by the non-applicant be dismissed. The non-applicant No. 1 had submitted in her reply that no such Talaknama or compromise deed has been executed between them and if there exists any such document, then it is false and fabricated. Looking to the objection raised by the non-applicant No. 1, the applicant filed another application under Section 45 of the Evidence Act praying that said Talaknama and compromise deed be got checked by handwriting and fingerprint expert.

3. After due consideration, learned Court below rejected both the applications filed by the applicant observing that the applicant has not got canceled the order dated 31-10-2015

passed in MJC (Cr.) No. 66/2015. Therefore, that order is still in existence and that Court has no right to review its own order or reject it. Further observing that since the application filed by the applicant as preliminary objection has been dismissed, therefore, the Court below also dismissed the application filed by him under Section 45 of the Evidence Act. Hence, this revision.

4. Learned counsel for the applicant submits that the deed of Talaknama and compromise had been executed between the applicant and the non-applicant No. 1 with their mutual consent on 27-12-2016, therefore, in view of the provisions of Section 127(3)(c) of the Cr.P.C., learned Court below ought to have accepted the application filed by the applicant and execution proceedings should have been dismissed. If learned Court below was not believing in that document in view of the objection raised by the non-applicant, then that document should have been got checked by fingerprint and handwriting expert, but learned Court below by not allowing that preliminary objection, illegally dismissed the application filed by the applicant. He further submits that in compromise held between the applicant and non-applicant No. 1 she has accepted that she will not file any case before any forum for her or her daughter's (non-applicant No. 2) maintenance. Thus, since the non-applicant herself had voluntarily surrendered her right to maintenance, therefore, the impugned order dated 30-11-2019 is liable to be set aside.

5. I have heard learned counsel for the applicant and perused the documents available on record.

6. As per the Explanation (b) of sub-section (1) of Section 125 of the Cr.P.C., wife includes a woman who has been divorced or has obtained a divorce from her husband and has not re-married. Section 127(3)(c) of the Cr.P.C. provides that :-

127. Alteration in allowance -

(1) xxx xxx xxx

(2) XXX XXX XXX

(3) Where any order has been made under Section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that -

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance or interim maintenance, as the case may be, after her divorce, cancel the order from the date thereof.

7. Looking to the above provisions, it is clear that if a woman has been divorced or has obtained divorce from her husband and she had voluntarily surrendered her right to maintenance, then the Magistrate, after his satisfaction, shall cancel the order passed in favour of the woman.

8. In this case, it is said that Talaknama has been executed between the applicant and the non-applicant No. 1 on 27-12-2016 and on the same day, deed of compromise was also executed in which the non-applicant had surrendered her right to get maintenance from the applicant, but as per impugned order, the non-applicant No. 1 has denied that no such Talaknama or compromise has been arrived at between them and no such deed has been executed, but the applicant has filed forged document to avoid maintenance.
9. If, said Talaknama and compromise deed had been executed, then the applicant is required to file application under Section 127(3)(c) of the Cr.P.C., which is said to have been filed and restoration is pending, but no such order has been passed regarding cancellation of order dated 31-10-2015 passed in MJC (Cr.) No. 66/2015. Therefore, that order still exists and in view of that order, right to get maintenance amount also exists.
10. In view of above discussion, I do not find any infirmity or illegality committed by the Court below while passing the impugned order.
11. Consequently, instant criminal revision filed by the applicant fails and is hereby dismissed.

**Sd/-
(NK Chandravanshi)
Judge**