

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION NO. 76 OF 2020
IN
CRIMINAL WRIT PETITION NO.209 OF 2018

Pramila Premnath Gadekar

... Applicant.

v/s.

Premnath P. Gadekar And 9 Ors.

.... Respondents.

Ms. Gautami Kamat, Advocate under Legal Aid Services for the Applicant.

None for the Respondents.

Coram: NITIN W. SAMBRE, J.

Date: 15th April 2021

P.C.:

By this application, the petitioner-wife has sought recall/review of the order pronounced on 26.11.2019 passed in Criminal Writ Petition No.209 of 2018 whereby the petition preferred by the petitioner came to be dismissed. In the said petition challenge was to the order dated 22.02.2018 passed by the learned Additional Sessions Judge, Mapusa, who confirmed the order dated 06.04.2016 passed by the Judicial Magistrate First Class, Mapusa in Criminal Case No.AOA/1759/DVA/2014/A whereby application for interim maintenance came to be rejected.

2. The learned Counsel would urge that as far as the annulment/divorce proceedings are concerned, same are still pending adjudication and the matter is now scheduled for hearing on 02.07.2021 before the Court of Civil Judge Senior Division, Mapusa. According to her, in the reasons recorded while dismissing the claim for grant of maintenance, the parties to the petition have not pointed out correct factual matrix which has resulted in the passing of order of dismissal of petition of which recall is warranted.

3. So as to substantiate her claim for exercising power of recall reliance is placed on paragraph 18 in the judgment of this Court in the matter of ***Kalpana d/o Nilaram Harinkhede***¹ which reads thus:

“18. Another contention of the learned Additional Public Prosecutor that this Court cannot review its own order, is far fetched. The petitioner has approached this Court by filing a writ petition invoking Articles 226 and 227 of the Constitution of India and section 482 of the Criminal Procedure Code. In the case of Shivdeo Singh and others vs. State of Punjab and others, AIR 1963 SC 1909, the Supreme Court has already settled the law by observing that the High Court has, under Article 226 of the Constitution of India, inherent power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors

¹ [1999(3)] Mh.L.J. 496

committed by it. This Court has no hesitation to allow the reivew application, as otherwise it would result in miscarriage of justice. Though the petitioner has lost the remedy of having the guilty punished, she would be left to suffer humilation and indignity as a victim of the crime, without any compensation to be paid to her by the State which is squarely responsible for its failure to prosecute the respondents/accused within time.'

5. As far as the aforesaid contentions are concerned, same had gone uncontroverted as the respondent No.1 has chosen not to appear in the matter though he is served.

6. According to the learned Counsel even though there are other respondents, i.e. respondent No.2 to 10, the relief of maintenance is claimed only against the husband i.e. respondent No.1. It is also pointed out that in the petition only respondent No.1 was heard in the matter of maintenance.

7. In the aforesaid background, the submissions made by the learned Counsel for the petitioner to the extent of pendency of the proceedings for divorce before the Court of Civil Judge Senior Division, Mapusa are accepted. As far as order of this Court is under review is concerned, it can be noticed that same is based on erroneous narration of fact about conclusion of divorce proceedings in favour of respondent No.1 husband. Said incorrect fact has

prevailed before this Court when the order of dismissal of petition was made. In specific words this Court noted findings of disallowing the claim for maintenance.

8. As is apparent from the Judgment of this Court in the matter of *Kalpana* cited supra, even in criminal writ petition power of review can be exercised so as to correct the grave or palpable error, or to prevent miscarriage of justice, a case for showing indulgence is made out. As the order dated 26.11.2019 was passed on the erroneous factual matrix, the said order is reviewed and stands recalled.

9. As consequences of above, the Criminal Writ Petition No. 209 of 2018 stands restored to the file.

10. The application stands allowed in the above terms.

NITIN W. SAMBRE, J

msr.