

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO.44 OF 2021
IN
CRIMINAL REVISION APPLICATION NO.5 OF 2021

MAHENDRA TUKARAM
HALARNKAR

... APPLICANT

Versus

SMITA MAHENDRA
HALARNKAR & ANR.

.... RESPONDENTS

Mr. S.D. Lotlikar, Senior Advocate with Mr. Terence B. Sequeira, Advocate for the Applicant.

Mr. S.M. Singbal, Advocate for the Respondents.

CORAM : M.S. JAWALKAR, J.

Reserved on : 16th September, 2021

Pronounced on : 20th September, 2021

ORDER :

The present Criminal Misc. Application is filed for recalling the order dated 02.08.2021, passed by this Court in Criminal Revision Application No.5 of 2021 mainly on the ground that the observations made by this Court in para 24 of the impugned order that "The revisional Court (Sessions Court) has not considered the aspect of maintenance under the provisions of Portuguese Civil Code" suffers from an error apparent on the face of record. As there were no pleadings to claim maintenance under the Portuguese Civil Code before the trial Court as well as the revisional Court, such issue cannot be

raised for the first time in the High Court.

2. It is also further contended that no parallel inference is drawn between the Judicial Magistrate First Class that is considering an application for maintenance under Section 125 of Cr.P.C. and a family Court considering an application for maintenance under Section 125 of Cr.P.C. as family Court is invested with both Civil and Criminal law.

3. There is preliminary objection raised by the other side that there cannot be any recall of the order in criminal matters as after passing of the order the Court becomes *functus officio*.

4. Both the parties relied on citations in support of their contentions.

5. Learned Senior Counsel for the applicant relied on ***M.M. Thomas V/s. State of Keral and Ors. AIR 2000 SC 540***, wherein it is held that High Court being a Court of record as envisaged in Article 215 has inherent powers to review besides powers under Act. Learned Senior Counsel also relied on ***Municipal Corporation of Greater Mumbai & Ors. V/s. Pratibha Industries Ltd. & Ors.***, which laid down similar

preposition as above.

6. As against this, learned Counsel for the non-applicant relied on ***State of Madhya Pradesh V/s. Man Singh, in Criminal Appeal No.410 of 2011***, (Single Bench) wherein the Hon'ble Apex Court has observed as under:

“5. It is well settled law that the High Court has no jurisdiction to review its order either under Section 362 or under Section 482 of CrPC1. The inherent power under Section 482 CrPC cannot be used by the High Court to reopen or alter an order disposing of a petition decided on merits 2. After disposing of a case on merits, the Court becomes functus officio and Section 362 CrPC expressly bars review and specifically provides that no Court after it has signed its judgment shall alter or review the same except to correct a clerical or arithmetical error 3. Recall of judgment would amount to alteration or review of judgment which is not permissible under Section 362 CrPC. It cannot be validated by the High Court invoking its inherent powers.”

7. After hearing the learned Counsel for the parties for some time, it is realised that confusion is only due to the words “on the quantum of compensation” appearing in last line of paragraph 24 and clause 'd' of the order dated 02.08.2021. It is suggested by the learned Senior Counsel for the applicant that if the said words are deleted and the applicant to allowed to agitate all the issues before the Sessions Court, it is acceptable to him.

8. Learned Counsel for the non-applicant submitted that he is also having no issue for raising all the points before the Sessions Court, or before the learned JMFC at the time of hearing application finally. The revision is preferred against the interim order of compensation. The point whether the learned JMFC can exercise his powers to grant maintenance beyond the age of majority as described in Section 125 of Cr.P.C., in view of civil jurisdiction he is having, will have to be argued in the main petition before the learned JMFC.

9. I have considered submissions made before me by both the parties. In fact, the matter is remanded by setting aside the impugned order for fresh consideration, which means all the grounds and contentions are kept open. To avoid further confusion, it would be appropriate to add the words “**or entitlement of the same**” after the words “**on the quantum of compensation**” in clause 'd' as well as paragraph 24 of the order dated 02.08.2021.

10. Accordingly, necessary corrections be carried out in the original order dated 02.08.2021.

11. Criminal Misc. Application stands disposed of.

M.S. JAWALKAR, J.

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NITI K

HALDANKAR

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