

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 222 OF 2022

Devendra @ Bablu Chotulal Chaudhari,
Age: 34 years, Occu. Labourer and Driver,
R/o. Plot No. 4, Shanti Nagar,
Market Yard, Dhule,
Taluka and District Dhule.

... Petitioner
(Orig. Non-Applicant)

Versus

Trupti Devendra @ Bablu Chotulal Chaudhari,
Minor Represented Through Guardian Mother,
Hemangi Suresh Chaudhari,
Age: 29 years, Occu. Household,
R/o. Chaudhari Wada, Behind Gosavi Lane,
Chalisgaon, Tq. Chalisgaon, Dist. Jalgaon.

... Respondent
(Orig. Applicant)

...

Mr. Amol S. Sawant, Advocate for Petitioner.
Mr. Ujwal Subhash Patil, Advocate for Respondent.

...

CORAM : **SHRIKANT D. KULKARNI, J.**

DATE : 27th September, 2022.

ORAL JUDGMENT:

. Rule. Rule made returnable forthwith. Heard finally with
consent of both the sides at admission stage.

2 The petitioner has challenged the order of maintenance passed by the learned Judicial Magistrate First Class, Chalisgaon in Miscellaneous Criminal Application No.934 of 2017 under Section 125 of the Code of Criminal Procedure (hereinafter referred to as the “Cr.P.C.”).

3 Heard Mr. Amol Sawant, learned counsel for the petitioner and Mr. Ujwal Patil, learned counsel for the respondent.

4 Mr. Sawant, learned counsel for the petitioner vehemently submitted that there was divorce by mutual consent between the parties under Section 13-B of the Hindu Marriage Act, 1955. The competent Civil Court was pleased to grant decree of divorce by mutual consent vide order dated 10th October, 2017. He submitted that while passing the decree of divorce by mutual consent, the competent Civil Court has made observations that the present petitioner / husband has paid Rs.2,00,000/- in all to his wife and daughter Trupti towards maintenance, education and for all the responsibilities. The wife of the petitioner has given up her right of maintenance by accepting Rs.2,00,000/- for herself and her daughter and accordingly, the decree of divorce by mutual consent came to be passed on 10th October, 2017.

5 After two months, the wife has filed an application for maintenance before the learned Judicial Magistrate First Class, Chalisgaon for her daughter vide Miscellaneous Criminal Application No.934 of 2017. He submitted that the wife has suppressed material fact of receipt of Rs.2,00,000/- towards permanent alimony / maintenance for herself and her daughter while getting mutual consent divorce. He invited my attention to paragraph No.4 of the maintenance proceedings filed for daughter through her mother / Hemangi and submitted that she has played fraud on the Court by suppressing the material fact. She has not produced any document regarding receipt of Rs.2,00,000/- towards her permanent alimony. On the contrary, she contended that she has received Rs.1,00,000/- towards alimony. She has not received remaining balance amount of Rs.1,00,000/- by way of pleadings in paragraph No.4 and sought maintenance for her daughter.

6 He vehemently submitted that it is nothing but a fraud played on the Court while obtaining the order of maintenance from the learned Magistrate. The order of maintenance passed by the learned Magistrate is outcome of fraud and the order of maintenance passed by the learned Magistrate is nullity in the eye of law. Mr. Sawant,

learned counsel for the petitioner has placed his reliance on the decision of the Honourable Supreme Court in case of ***S.P. Chengalvaraya Naidu (Dead) By LRs. Vs. Jagannath (Dead) By LRs. and others, (1994) 1 Supreme Court Cases 1.*** He submitted that when a litigant approaches the Court, he must come before the Court with clean-hands. He should produce all the relevant documents to the litigation. If the litigant withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party.

7 Mr. Sawant, learned counsel for the petitioner, therefore, submitted that the petitioner has come before this Court by invoking writ jurisdiction by making allegations of fraud against his wife and challenged the order of maintenance passed by the learned Magistrate under Section 125 of the Cr.P.C. As such, the petition is maintainable though preliminary objection is raised by the opposite party.

8 Mr. Sawant, learned counsel for the petitioner invited my attention to the copies of affidavits (examination-in-chief) filed by the petitioner and his wife before the learned Joint Civil Judge Senior Division, Dhule in Hindu Marriage Petition No.424 of 2015 (page

Nos.30 and 32). He pointed out that the petitioner's wife Hemangi has admitted in her examination-in-chief, paragraph No.3, that she has received Rs.2,00,000/- in all from her husband towards maintenance for herself and her daughter and she has given up right of maintenance. By placing reliance on the examination-in-chief on affidavit sworn by wife / Hemangi, he submitted that the said document was suppressed by the wife while filing application for maintenance before the learned Judicial Magistrate First Class, Chalisgaon. She claimed maintenance for her daughter by suppressing this material document and it is a fraud played on the Court.

9 Mr. Sawant, learned counsel submitted that the petitioner's wife has accepted Rs.2,00,000/- and thereby given up her right of maintenance / alimony. As such, she cannot claim any maintenance for herself or for her daughter. The proceedings initiated by her before the Court of learned Judicial Magistrate First Class, Chalisgaon for claiming maintenance for her daughter is nothing but a fraud and the order of maintenance has been obtained fraudulently and it is liable to be quashed and set aside.

10 Per contra, Mr. Ujwal Patil, learned counsel for the respondent raised preliminary objection regarding maintainability of this petition. He submitted that the learned Magistrate has passed the order of maintenance under Section 125 of the Cr.P.C. As such, the efficacious legal remedy is available to the petitioner to challenge the said decision before the Sessions Court by taking aid of Section 397 of the Cr.P.C. The writ is not the remedy. As such, the petition is not at all maintainable and liable to be dismissed at the doorstep.

11 Mr. Patil, learned counsel further argued on merits. He invited my attention to the copy of application for maintenance filed by the daughter of the petitioner through her mother (page No.38). He invited my attention to paragraph No.1 and submitted that the wife has not suppressed any fact from the Court of learned Judicial Magistrate First Class, Chalisgaon while filing an application for maintenance under Section 125 of the Cr.P.C. She has given all the details before the learned Judicial Magistrate First Class, Chalisgaon about decree of divorce by mutual consent granted by the Civil Court, Dhule in Hindu Marriage Petition No.424 of 2015. He further invited my attention to paragraph No.4 of the said maintenance proceedings. He took me through the relevant portion of the said paragraph No.4 and submitted that the wife has given details regarding receipt of

Rs.1,00,000/- from her husband towards maintenance. He submitted that the petitioner / husband was required to pay Rs.1,00,000/- towards maintenance as agreed, but he did not stick up to his words and withdrawn from the said terms. The wife has not received Rs.2,00,000/- as agreed while passing the consent decree of divorce. She has only received Rs.1,00,000/-. It is the responsibility of the father to maintain his minor daughter till she attains the age of majority. He cannot run away from his liability to maintain his daughter. Since the petitioner did not comply with the terms of the consent divorce, the respondent / wife constrained to file an application for maintenance under Section 125 of the Cr.P.C. She has disclosed everything in her pleadings and there was no suppression of material facts from the Court on the part of the respondent / wife. It is not a case of playing fraud on the Court while filing the proceedings under Section 125 of the Cr.P.C.

12 Mr. Ujwal Patil, learned counsel for the respondent has placed his reliance on following two citations in support of his submissions:

- a) ***Gurmit Kaur Vs. Surjit Singh alias Jeet Singh, (1996)***
1 Supreme Court Cases 39; and

- b) ***Neha Tyagi Vs. Lieutenant Colonel Deepak Tyagi***,
Supreme Court (Civil Appeal No.6374 of 2021) dated
1st December, 2021.

13 By placing reliance on above said two citations, Mr. Patil, learned counsel for the respondent vehemently submitted that the petitioner / husband cannot be absolved from his liability and responsibility to maintain his minor daughter till she attains the age of majority. The daughter should not suffer because of marital dispute between father and mother. She needs to be maintained by her father. He supported the order of maintenance passed by the learned Magistrate.

14 Mr. Ujwal Patil, learned counsel for the respondent further invited my attention to the copy of order of maintenance passed by the learned Magistrate and pointed out that the present petitioner was served in that proceedings under Section 125 of the Cr.P.C. He had appeared but did not file his reply, which indicates that he was also knowing about such truth and chosen not to file any reply.

15 Mr. Patil, learned counsel submitted that the respondent has not played any fraud on the Court while obtaining the order of

maintenance under Section 125 of the Cr.P.C. She has not suppressed any document from the Court. There is no need to interfere in the order of maintenance passed by learned Judicial Magistrate First Class, Chalisgaon under Section 125 of the Cr.P.C. He, therefore, urged to dismiss the petition.

16 Let me first deal with the point of maintainability of this petition. There cannot be any legal debate that the order passed by the learned Judicial Magistrate First Class under Section 125 of the Cr.P.C. can be challenged by way of revision before the Sessions Court under Section 397 of the Cr.P.C., which is the efficacious remedy available under law. In normal circumstances, the aggrieved party must approach to the Sessions Court so as to challenge the order of maintenance passed by the Magistrate under Section 125 of the Cr.P.C.

17 On going through the pleadings of the petitioner, he has come out with a specific case that the impugned order of maintenance is obtained by the wife by playing fraud on the Court. If grounds pleaded in the petition are considered carefully, then one would find that the petitioner by raising specific ground of fraud has approached this Court by invoking writ jurisdiction. It is the case of the petitioner

that the respondent has played fraud on the Court while filing proceedings under Section 125 of Cr.P.C. and succeeded in getting favourable order.

18 In this context, I have gone through the citation in case of ***S.P. Chengalvaraya Naidu*** (supra), wherein the Honourable Supreme Court in paragraph No.1 has made the following observations:

""Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree – by the first court or by the highest court – has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."

19 In the same decision, in paragraph No.6, it is observed by the Honourable Supreme Court that a litigant, who approaches the Court must come with clean-hands. It is observed that a litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a

vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party. In the light of above legal position made clear by the Honourable Supreme Court, when the petitioner has come out with a specific defence of playing fraud by the respondent while obtaining the order under Section 125 of the Cr.P.C., the petition under Article 227 of the Constitution of India is rightly maintainable before this Court. As such, the objection raised by Mr. Ujwal Patil, learned counsel for the respondent needs to be overruled.

20 Now, coming to the merits of the petition, whether the respondent / wife has played fraud on the Court. There is no dispute that the marriage between the petitioner and his wife Hemangi was solemnized way back on 28th March, 2012. The couple is blessed with one daughter. Due to matrimonial discord, the dispute reached in the corridors of learned Joint Civil Judge Senior Division, Dhule. It is evident from the order passed by the learned Joint Civil Judge Senior Division, Dhule in Hindu Marriage Petition No.424 of 2015, the divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955 came to be passed on 10th October, 2017. It is specifically mentioned in the judgment of the consent divorce dated 10th October, 2017 that the petitioner / husband has given in all Rs.2,00,000/- to his

wife and daughter Trupti for their maintenance, residence, education etc. The copy of examination-in-chief on affidavit of respondent / Hemangi is also placed on record (page No.30). Paragraph No.3 of the examination-in-chief of respondent / Hemangi throws light about accepting Rs.2,00,000/- towards permanent alimony / maintenance and giving up right of maintenance / permanent alimony in lieu of Rs.2,00,000/-. Paragraph No.3 is very much clear on this aspect, which need not required any elaboration when the language used therein is very much clear. Similar kind of version finds place in the examination-in-chief on affidavit filed by the petitioner / husband (page No.32). It is, therefore, clear that by placing evidence on affidavit produced by the husband and wife, the competent Civil Court was pleased to accept their case of divorce by mutual consent and accordingly, pleased to pass the decree of divorce on 10th October, 2017 by observing that husband has given Rs.2,00,000/- to his wife and daughter towards permanent alimony.

21 In the above background, let me examine the proceedings initiated by the respondent / wife before the learned Judicial Magistrate First Class, Chalisgaon seeking maintenance under Section 125 Cr.P.C. for her daughter. On going through the copy of application (page No.38), paragraph No.1 indicates that she has given

details of the proceedings of consent divorce between the parties and decree of consent divorce in the proceedings of Hindu Marriage Petition No.424 of 2015. Paragraph No.4 of the application is crucial.

22 On having microscopic examination of paragraph No.4, one would find that the respondent / wife has pleaded in her application for maintenance for her daughter that the petitioner / husband has paid only Rs.1,00,000/- and though assured to pay remaining amount of Rs.1,00,000/-, not stick up to his promise and refused to pay the remaining amount of Rs.1,00,000/-. It is stated in the application that though it is mentioned that the fixed deposit would be made in the name of daughter, the petitioner has avoided the same though it was his liability. It is pertinent to note that in paragraph No.5, respondent / wife has nowhere stated about her affidavit filed in the proceedings for mutual consent divorce and acceptance of Rs.2,00,000/- towards permanent alimony and giving up right of maintenance. As pointed out earlier, her examination-in-chief on affidavit before the Civil Court makes it very clear that she has received Rs.2,00,000/- towards permanent alimony and she has given up right of maintenance for herself and her daughter.

23 In this background, it was very much incumbent on

respondent / wife to produce the copy of affidavit, which is sworn and filed by her in the Civil Court in the proceedings for mutual consent divorce. By suppressing the said document, she has made averments that she has received only Rs.1,00,000/- towards permanent alimony and petitioner / husband is liable to pay remaining amount of Rs.1,00,000/- and since he has not paid that amount, she constrained to file maintenance proceedings under Section 125 of the Cr.P.C for her daughter. It is nothing but playing fraud on the Court while filing proceedings under Section 125 of the Cr.P.C. According to the decision of the Honourable Supreme Court in case of ***S.P. Chengalvaraya Naidu*** (supra), respondent / wife ought to have produced all the relevant documents in the proceedings under Section 125 of the Cr.P.C. including her affidavit as well as the affidavit of her husband filed in a proceedings of mutual consent divorce. She has withheld those vital documents only with a view to obtain the order of maintenance and this inference can be drawn easily in the above factual scenario.

24 There cannot be any debate that it is the legal and moral responsibility of a father to maintain his minor children till they attain the age of majority. In case of ***Neha Tyagi*** (supra), the Honourable Supreme Court has observed about the liability of a father to maintain

his children till they attain the age of majority. The facts of the cited case are distinguishable from the facts of the case in hand. In the cited case, there was no case of relinquishment of right of maintenance by accepting *lump-sum* amount. In the present case, it is specific case of petitioner / husband that he has paid Rs.2,00,000/- to his wife towards her permanent alimony as well as permanent alimony of his minor daughter. As such, the cited case relied upon by Mr. Ujwal Patil, learned counsel for the respondent does not extend any help. In case of **Gurmit Kaur** (supra), the Honourable Supreme Court has ruled that the wife is entitled to get maintenance so long as she remains unmarried though divorce agreement by mutual consent. Again the facts of the cited case are distinguishable than the facts of the case in hand.

25 Having regard to the above reasons and discussion, it is very much clear that respondent / wife has suppressed vital document from the learned Judicial Magistrate First Class, Chalisgaon while claiming the relief under Section 125 Cr.P.C. It is true that the petitioner / husband was duly served in the proceedings and he had appeared and not filed his reply / say. The reason to that effect finds place in the petition, paragraph No.14, which has remained uncontroverted by the opposite side / respondent. It appears that

after initiating the said proceedings, there was meeting between the petitioner and his wife with the relatives and it was assured on behalf of the wife that the proceedings for maintenance would be withdrawn since the entire amount of permanent alimony has been received by her. Perhaps that may be the reason why the petitioner did not choose to file any reply. By that as it may, the respondent has not approached the learned Judicial Magistrate First Class, Chalisgaon with clean-hands. She has withheld important documents and thereby succeeded in obtaining the order of maintenance. This act of fraud cannot be overlooked. The order of maintenance passed by the learned Magistrate is nothing but outcome of the fraud and the order of maintenance passed by the Magistrate under Section 125 of the Cr.P.C. is nullity in the eye of law. The order under Section 125 of the Cr.P.C. passed by the learned Judicial Magistrate First Class, Chalisgaon is liable to be quashed and set aside in the above scenario.

26 In the result, the petition succeeds and the following order is passed :

ORDER

- I. The criminal writ petition stands allowed in terms of prayer clause 22(A).

- II. Rule is made absolute in above terms.
- III. No order as to costs.
- IV. The petition is accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]

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