

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.183 OF 2022

SAYARABEE W/O. HAMID KHAN PATHAN
VERSUS
HAMID KHAN S/O. CHAND KHAN PATHAN

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Advocate for Petitioner : Mrs. M. V. Narwade

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CORAM : R.M. JOSHI, J

DATE : JULY 28, 2023

PER COURT :

1. This Petition takes exception to the order dated 29.07.2016 passed by learned Additional Sessions Judge, Aurangabad in Criminal Revision No. 28/2011.

2. Petitioner filed application under Section 125 of Cr.P.C wherein an order was passed in Criminal M.A. No. 18/2007 directing payment of maintenance of Rs. 500/- pm. The said order came to be challenged in the revision petition filed under Section 397 Cr.P.C by husband with specific contention that previously application being application no. 14/1994 and another Petition being No. 261/1999 before Family Court, Aurangabad came to be filed. According to him, both these applications/petitions were rejected by

respective Court. It is contention that by suppressing these facts, present maintenance Petition is filed.

3. Learned Revisional Court in paragraph nos. 6 and 7 of the impugned order has specifically dealt with the previous disputes and litigations between the parties. It is clearly observed therein that the previous two proceedings for maintenance were dismissed for the reason that the Petitioner is divorced by Respondent by pronouncing Talaq.

4. Learned Counsel for the Petitioners relied upon the judgment of Hon'ble Supreme Court in case of Shamim Ara Vs. State of U.P. and Anr, 2002 Cr.L.J. 4726 to submit that a mere plea taken by the husband in the written statement about Talaq is not sufficient that it needs to be established that Talaq was pronounced for sufficient reason. In the instant case, the plea of talaq has not been raised for first time. In previous two proceedings same stand was taken by husband and both Courts have accepted the same and rejected maintenance proceedings filed by wife.

5. Admittedly, these orders are not challenged by

the Petitioner and they have attained finality. In such circumstances, it is not open for this Court to accept the submissions made relying upon judgment of Apex Court. The said issue has been finally determined by competent Court and those verdicts are not taken exception at any time and nor they are subject matter of this Petition. Therefore, it is not open for this Court to entertain and decide the issue which would tantamount to setting aside those orders. Even otherwise, though now submissions are sought to be made in this regard but perusal of criminal application filed before Magistrate or even grounds in this Petition do not show any such plea being taken by Petitioner. Needless to say that for want of raising of such question before trial and Revisional Court and the question would involve determination of question on basis of disputed facts, it cannot be decided in Petition.

6. Considering above discussion, no case is made out to cause interference in the impugned order. Hence, Petition stands dismissed.

(R.M. JOSHI, J.)