

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

45 CRIMINAL WRIT PETITION NO.1508 OF 2022

**SUBHASH MANOHAR SAINDEVISE
VERSUS
MANISHA SUBHASH SAINDEVISE**

Mr. Vinod Patil, Advocate for the petitioner
Mr. Prafullasing H. Patil, Advocate for the respondent

CORAM : KISHORE C. SANT, J.

DATE : 29th MARCH, 2023

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1. Heard the learned advocates for the parties.

2. The petitioner has approached this court for quashing of proceeding bearing Cri. Misc. Application No.53/2021 under Section 125 filed by the respondent wife which is pending in the court of Learned JMFC, Amalner on the ground that in the earlier round the parties had settled the matter by entering into the compromise. Said compromise was recorded in the second appeal No. 175/2010 and second appeal No. 160/2011 filed by the parties against each other. This court

at principal seat had recorded minutes of the order in the order dated 11-04-2011. By way of compromise wife had relinquished all her rights including future rights in lieu of the amount of Rs.3 lakhs. The learned advocate for the petitioner submits that in view of this compromise wife cannot file the petition under Section 125 after entering into the contract.

3. The learned advocate for the petitioner in support of his case relied upon the judgment reported in 2003 (2) Mh.L.J. 608 in the case of Popat Kashinath Bodke Vs. Kamalabai Popat Bodke and another; the judgment reported in 2005 (1) Mh.L.J. 348 in the case of Gajajan Pandurang Solanke Vs Sheela Gajanan Solanke. In both the judgments it is held that wife is not entitled to claim maintenance after taking divorce by mutual consent and after started residing separately. He also relied upon the judgment passed by the Hon'ble Apex Court reported in (2005) 3 SCC 299 in the case of Ruchi Agrawal Vs Amit Kumar Agrawal and others to submit that the parties after entering into the compromise cannot retract thereafter. It was a case that in

125 proceeding the parties had arrived at compromise and in view of the compromise the parties divorced each other. After the divorce wife had filed criminal complaint against husband for the offences punishable under Section 498-A. The Hon'ble Apex court in that view of the matter had quashed the proceeding of the said criminal case.

4. As against that the respondent relied upon the case reported in 2019 ALL MR (Cri) 426 in the case of Ramchandra Laxman Kamble Vs Shobha Ramchanda Kamble and others. This court by considering the judgment reported in (1979) 2 SCC 316 in the case of Bai Tahira Vs Ali Hussain Fidaalli Chothia and anr and in the case reported in (2009) ALL MR (Cri) 182 in the case of Mahesh Chandra Dwivedi Vs State of UP and others and other cases held that considering that right of maintenance is statutory right. The liability is distinct from liability under general law and therefore, it cannot be taken away.

5. Thus, considering the judgments this court finds that

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it would not be proper to quash the proceeding at this stage. In view of the same, the parties are at liberty to agitate their case before the trial court. In view of this, petition stands disposed off.

[KISHORE C. SANT, J.]

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