



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 463 OF 2024

Zuber Shaikh Saeed

VERSUS

Naziya Shaikh Zuber And Another

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Advocate for the Petitioner : Mr. Deshpande Gaurav L.

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CORAM : S.G. MEHARE, J.

DATED : JUNE 27, 2024

PER COURT:-

1. Heard learned counsel for the petitioner.
2. Actually the matter was posted for return of notice of respondent nos.1 and 2. Instead of waiting for it, the counsel for the petitioner started arguing the matter, contending that the distress warrant had been issued. He was arguing , as if, the distress warrant issued against the petitioner is going to be executed today. Counsel for the petitioner has no instructions about the action taken against the petitioner for distress warrant. The order dated 30.04.2024 was to re-issue the distress warrant against the non-applicant as prayed. That indicates that the earlier distress warrant was not served.
3. The bone of contention of the petitioner is that the petitioner has sought a review of the order, which is a procedural review and not a substantive review. He would submit that the Court

passed the impugned order without hearing him. He would rely on the case of Ganesh Patel Vs. Umakant Rajoria, 2022 LiveLaw (SC) 283. The learned Trial Court had passed the order below Exhibit-4. It has been observed in para 26 of the order that the interim maintenance would be continued till disposal of the case, and she is free to exercise the legal remedy. It was contended that as per the conclusion recorded in para 25 in Criminal Misc. Application No.161 of 2018 that she has not recovered the maintenance of Rs.3,000/- per month which was granted after the judgment because she would recover the maintenance as per the order of the Family Court. She would execute only the order granting rent in that proceeding. She prayed to pass the order that she is entitled to recover the maintenance as observed in para 26 from 08.02.2019 till disposal of the matter. The Court heard the applicant and passed the order that the rights were given to the petitioner in para 25 of the order in Criminal Misc. Application No.161/2018 to recover Rs.3,000/- per month. However, maintenance could be recovered either from the Judicial Magistrate or from the Family Court. It has been observed in para 26 that the petitioner would be entitled to recover the interim maintenance granted as per the order dated 08.02.2019. It was finally observed that the petitioner in that application was entitled to recover the interim maintenance from 08.02.2019 till 23.02.2022.

4. The present petitioner sought the review of the above order. The bone of contention of the petitioner is that he is not liable to pay the said amount. The said order is passed without issuing notice. Therefore, that order should be recalled/reviewed.

5. After hearing the respective parties, the Court observed that the applicants/respondents herein had filed two simultaneous applications for grant of maintenance i.e. one under Section 125 of the Code of Criminal Procedure before the Hon'ble Family Court and one under Section 12 of Protection of Women from Domestic Violence Act before this Court. The judgment in the case filed under Section 12 of D.V. Act was passed on 23.02.2022, and in the case filed under Section 125 of Cr. P.C. was passed on 27.05.2019. It seems that both applications were filed on the same date i.e. 06.02.2018. In the Domestic Violence Act proceeding, applicants had filed an interim maintenance application under Section 23 of the said Act, and accordingly, interim maintenance was granted. In the finding of judgment passed in the proceeding filed under Section 125 of the Cr.P.C., the Hon'ble Family Court permitted adjustment of interim maintenance amount awarded under Section 23 of the D.V. Act and held that amount awarded in the proceeding under D.V. Act as interim maintenance shall be adjustable against the amount awarded in the proceeding filed under Section 125 of the Cr.P.C. and the respondent is not liable to pay maintenance over and above Rs.3,000/- per month

each. That finding was considered by my learned predecessor while passing judgment in the proceeding filed under Section 12 of the D.V. Act i.e. Cri. M.A. No.161/2018. Thereafter, applicants filed present application (main application) for recovery of arrears of interim maintenance awarded under Section 23 of the D.V. Act. After filing of the application for recovery of arrears, applicants filed an application at Exh.4 and sought clarification whether or not, applicants are entitled to recover arrears of interim maintenance amount. Finally, it was observed that the Criminal Court has no power to review/recall. The respondent failed to show under which provisions of law this application is maintainable. Under these premises, the application has been rejected.

6. The question is whether the criminal Court has the power to review the order. In the case of Ganesh Patel (Supra), the Hon'ble Supreme Court referred to Section 362 of the Cr.P.C. and observed that the application for recall of the order is maintainable when it is an application seeking procedural review and not a substantive review.

7. Section 362 permits the criminal Court to correct the clerical or arithmetical errors in the judgment once it is pronounced and signed. It is not the case that some clerical or arithmetical corrections were allowed by the learned Magistrate. There appears to be no substance in the submissions of the learned counsel for the

petitioner that the substantial rights of the parties have not been decided. However, in the application, he would contend that the impugned order is illegal and without following any provisions of Cr.P.C. The main contention of the petitioner is that he is not liable to pay the interim maintenance granted to the respondent under Section 23 of the D.V. Act, which is an interim maintenance. That order is executable.

8. In view of the above discussion, this Court is of the view that the submissions of the learned counsel for the petitioner that since the impugned order is procedural, is liable to be reviewed, is incorrect. It is a substantive order passed by the Judicial Magistrate. If the Magistrate errs in passing any order, the legal remedy is available to the petitioner. It seems that the petitioner has not been correctly advised, and he has been directly shown the doors of the High Court at higher expense. This is unjustifiable. Everyone has to care that the litigant should get justice at his doorstep at the cheapest expense. Be that as it may, the Court did not find substance in the petition. The impugned order is legally correct and proper. However, the remedy is available against the impugned order. Since the counsel for the petitioner started arguing the matter as observed above, the matter was heard without waiting for the appearance of the respondents and decided at the threshold.

9. For the above reasons, the petition stands dismissed, keeping the remedy available under the open provisions of law.

(S.G. MEHARE, J.)

Mujaheed//