

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 488 OF 2024

Kiran Pandurang Aher

VERSUS

Bharti W/o. Kiran Aher And Another

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Advocate for the Petitioner : Mr. Dixit Satyajeet S

Advocate for Respondents : Mr. Kadu Shivraj B.

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CORAM : S.G. MEHARE, J.

DATED : JUNE 24, 2024

PER COURT:-

1. Heard the respective counsels.
2. The respondent/wife had filed an application bearing Criminal Misc. Application No.244/2018 against the petitioner under the provisions of Domestic Violence Act. They had amicably settled the dispute on 25.09.2021. After the settlement, the respondent/wife cohabited with the petitioner/husband happily. However after two years, Criminal Misc. Application No.197/2020 which was filed before the compromise for recovery of interim maintenance was restored. In that case, the petitioner had filed an application for dropping/quashing of recovery proceeding as they had amicably settled the dispute and respondent/wife has waived the entire rights arising out of the matrimonial dispute. After two years, the wife also filed fresh Domestic Violence Act case which was registered as Criminal Misc. Application No.60/2023.

3. Learned counsel for the petitioner submits that since the dispute was amicably settled after Criminal Misc. Application No.197/2020 was filed, she has no right to claim the execution of the interim maintenance. After the dispute was settled, she stayed with him for two years. She cannot execute the interim maintenance order arising out of the proceeding which was amicably settled. He would submit that on new cause of action, she filed a fresh petition. The Court has assigned the wrong reasons rejecting the application. Criminal Misc. Application No.197/2020 which was for recovery of interim maintenance arising out of Criminal Misc. Application No.244/2018 is inexecutable. Therefore, the said proceeding is liable to be quashed/dropped.

4. Per contra, learned counsel for the wife has argued that the petitioner failed to comply with the settlement terms. Hence, her right to recover the interim maintenance has been revived. He read the observations recorded by the learned Judicial Magistrate First Class. He would submit that the right was correctly revived. Huge amount of Rs.1,15,000/- was to be recovered. Since the petitioner has violated the settlement terms, he cannot ask for dropping the said proceeding.

5. On the question of survival of Criminal Misc. Application No.197/2020, the learned Magistrate has recorded the finding that the wife had filed the recovery application from non-applicant

granted to her in Criminal Misc. Application No.244/2018. Therefore, the said application is liable for execution. Furthermore, it is admitted fact, the non-applicant has failed to comply with the maintenance order passed in Criminal Misc. Application No.244/2018 and there is outstanding amount of Rs.1,15,000/- against the non-applicant. Hence, it is justifiable to issue the recovery warrant for the said amount against the non-applicant. The learned Judicial Magistrate also observed that the respondent has withdrawn only the domestic violence petition filed against the petitioner on the condition that, he would cohabit with her, treat her with dignity and in happy manner. But, the non-applicant has failed to comply the conditions of compromise pursis. It is admitted fact that the applicant at present is residing separate from the non-applicant and the non-applicant filed the divorce petition against the applicant. Therefore, as the conditions agreed in the compromise pursis at Exhibit-12 becomes violated by non-applicant, the applicant has every right to seek relief against the non-applicant under the various provisions availed to her.

6. The learned Magistrate has also reproduced the contents of the compromise in which both have permanently withdrew the complaints made against each other. When the compromise took place, Criminal Misc. Application No.194/2020 was pending. Though it was not specifically reflected in the compromise pursis, the recitals of the compromise pursis shows that the respondent has impliedly

waived all the rights which she had accrued from the domestic violence alleged the petition and consequently the order granting interim maintenance also came to end. In no way, it is a criminal breach of trust. After a long period of two years residing together, again the dispute arose. On the fresh cause of action, the respondent/wife has knocked the doors of the Court of law. Filing of the divorce petition is not a condition to revive the earlier proceedings of recovery bearing No.197/2020. Since the parties have amicably settled and resolve their dispute, the order granting interim maintenance in the original proceeding bearing Criminal Misc. Application No.244/2018 was inexecutable. The findings recorded by the learned Magistrate are apparently against the facts and tenor of the settlement. Such petition ought to have been dismissed as the order was become inexecutable in view of the amicable settlement.

7. For the above reasons, the order of the learned Judicial Magistrate First Class, Akole, District Ahmednagar passed below Exhibit-10 in Criminal Misc. Application No.197/2020 dated 03.11.2023 stands quashed and set aside.

8. The application Exhibit-10 is allowed.

9. Criminal Misc. Application No.197/2020 stands quashed/dropped.

10. No order as to costs.

11. The observations recorded in this order would not affect the future right to seek the relief on the fresh cause of action.

(S.G. MEHARE, J.)