



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

27 CRIMINAL WRIT PETITION NO. 1015 OF 2024

RAJU @ RAJENDRA UTTAM KHALDKAR

VERSUS

KASABAI W/O RAJENDRA KHALDKAR AND ANOTHER

....

Mr. R. N. Chavan, Advocate for the Petitioner

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 18.11.2024

PER COURT :-

1. Heard Mr. Chavan, the learned Counsel for the Petitioner at length.

2. By the present Petition under Article 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, the Petitioner prays for quashment of Criminal Misc. Application No. 105 of 2020, pending on the file of the learned J.M.F.C. Paithan, under the provisions of Section 125(3) of the Code of criminal Procedure.

3. The learned Counsel for the Petitioner canvasses in vehemence that, on 22.07.2016, the matrimonial dispute between

the petitioner-husband and the Respondent-wife was orally settled and in pursuance of said oral settlement, the Petitioner already transferred total 0.40 R land in favour of the Respondent for full and final settlement. However, the Respondent-wife filed the impugned proceeding against the petitioner for recovery of maintenance amount after gap of seven years of passing the judgment and order dated 04.10.2013 in Criminal M.A. No.05 of 2012. Therefore, said proceeding is totally misuse of law to harass the petitioner.

4. It is further canvassed that, the Respondent Nos. 1 & 2 have filed Misc. Cri. Appln. No. 105 of 2020 for recovery of maintenance amount of Rs. 24,000/- w.e.f. 07.02.2019 to 07.02.2020 against the petitioner in pursuance of Judgment and order dated 04.10.2013 passed in Cri. M.A. No. 5 of 2012, whereby the maintenance of Rs.1,500/- p.m., was granted in favour of Respondent No.1 and Rs.500/- p.m. in favour of Respondent No.2, however, the Respondents have filed execution proceeding bearing Criminal M.A. No.105 of 2020 after laps of 7 years in spite of oral settlement and even after transferred of 0.40 R land in their favour, therefore, the execution proceeding for recovery of maintenance amount is not maintainable, hence, prayed to quash and set aside the same.

5. The learned Counsel for the Petitioner further canvassed that Respondent No.1 had lodged a F.I.R. against the Petitioner for the offence punishable under Sections 498A, 323, 504, 506 read with Section 34 of the Indian Penal Code, which was registered as R.C.C. No.83 of 2009. However, vide judgment and order dated 16.02.2022, the Petitioner and his family members are acquitted for the said offence. Further, the other proceeding bearing R.C.S. No.236 of 2013, praying decree of permanent injunction restraining the Petitioner from marrying with another lady was dismissed for want of prosecution. After filing the said suit, a family settlement was arrived on 22.07.2016 between the Petitioner and Respondent No.1 and for fulfillment of said settlement, the Petitioner transferred total 40 R land in favour of Respondent No.1. Therefore, prayed for quashing of the execution proceedings.

6. Needless to say that the Respondent Nos. 1 and 2 had filed Criminal M.A. No.05 of 2012 under Section 125 of the Code of Criminal Procedure and prayed for maintenance. On 04.10.2013, the learned J.M.F.C. Paithan, allowed the said Application and granted Rs.1,500/- p.m., maintenance to Respondent No.1 and Rs.500/- p.m.,

maintenance to Respondent No.2 from the date of the Application. Thereafter, Respondent Nos. 1 and 2 have filed Criminal Misc. Application No. 105 of 2020 under Sec. 125 (3) of Cri. P. C., for implementation/execution of the judgment and order dated 04.10.2013 passed in Criminal M.A. No. 05 of 2012. Though the petitioner contended that in pursuance of oral settlement between him and the Respondents, total 40 R land has been transferred in the name of Respondent No.1 and the Respondent Nos. 1 and 2 waives their right of maintenance. However, said fact can be proved by leading substantial evidence and it can not be tested while exercising jurisdiction under Article 226, 227 of the Constitution of India r/w Sec. 482 of Cri. P.C. Therefore, submissions advanced on behalf of the Petitioner are not acceptable to me and no case is made out even to issue notice to the Respondents. However, the petitioner will have right to raise said defence in his reply and lead the evidence to prove oral settlement between him the Respondent Nos. 1 & 2. In view of above discussion, the present Writ Petition is hereby dismissed.

[Y. G. KHOBRAGADE, J.]

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