

MHNS130004102024 	Cri.M.A./48/2024 Ashiyana Almin Pathan Vs. Almin Ayyub Pathan
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ORDER BELOW EXH. 27 IN

CRIMINAL MISCELLANEOUS APPLICATION NO.48/2024

1] The respondent has filed this application for stay of recovery proceeding arising out of Section 125 of the Cr.P.C.

2] The respondent has contended that he has been directed to pay monthly maintenance of Rs.1,500/- to the applicant in maintenance application No.02/2021. The said order was passed on 05/09/2022. Accordingly, the respondent regularly paid maintenance amount. But, since 10/04/2023 the applicant started cohabiting with the respondent. Accordingly, pursis was filed in recovery proceeding No.156/2022 on 02/08/2023. But, suddenly the applicant left the respondent's company and started residing at her maternal home. The applicant was residing with the respondent during the period of 10/04/2023 to 21/03/2024. The applicant is not entitled to claim maintenance for that period. But, she has started recovery of the said amount.

3] It is further contended that the applicant has claimed maintenance for more than 12 months in this proceeding. Hence, it is prayed that recovery proceeding may be stayed.

4] The applicant filed say and stated that the respondent has paid maintenance in this proceeding vide Exh.17 to Exh.24. Therefore, this application is not maintainable.

5] Learned advocate for the respondent argued that the applicant cannot claim maintenance while she was residing with the respondent. Further, the applicant cannot claim maintenance for the period more than 12 months.

6] The learned advocate for the respondent disputed the fact that the applicant was residing with the respondent for the alleged period. On the other hand, it was argued that on the same day of filing pursis, the applicant was compelled to reside to her maternal home. Pursis of cohabiting came to be filed only to avoid payment of maintenance. The respondent has given *talaq* to the applicant during the alleged period of cohabitation. Its shows that the applicant was not residing with the respondent.

7] Pursis dated 10/04/2023 shows that the applicant went to cohabit to the respondent on the said date. Copy of FIR shows that the applicant has filed FIR against the respondent on 14/04/2024 alleging that the respondent has given her *triple talaq* on 14/04/2024 while she was residing at her maternal home. Thereafter, she has filed this recovery proceeding on 12/03/2024.

8] From the above circumstances it appears that fact of cohabitation during 10/04/2024 to 31/03/2024 is disputed. But, that cannot the ground to stay recovery proceeding. At the most, the

respondent may apply for modification of maintenance order for the alleged period, which will be decided on merit based on evidence. Quantum of maintenance, if any, modified on such application may be adjusted in this proceeding.

9] So far as, objection of claiming maintenance for more than 12 months is concerned, proviso of Section 125 (3) of Cr.P.C. provides that

no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due.

10] There is no provision in Cr.P.C. which prohibits claiming maintenance for more than 12 years. The application is devoid of merit. Hence, I pass following order;

ORDER

Application (Exh.27) is hereby rejected.

Sd/-

[A. J. Patil]

Judicial Magistrate (F.C.)

Pimpalgaon (B).

Date : 21/07/2025

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