

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 3817/2024

Ganpat Lal S/o Sh. Dungarmal, Aged About 39 Years, R/o Chitrodi, Teh Raniwada, Dist Jalore. (Lodged In Central Jail Jodhpur.)

-----Petitioner

Versus

Smt. Santosh W/o Sh. Ganpat Lal, Aged About 33 Years, R/o Chitrodi, Teh. Raniwada, Dist. Jalore. At Present Ramdev Colony, Bhinmal, Teh. Bhinmal And Dist. Jalore.

-----Respondent

For Petitioner(s)	:	Ms. Khusbhoo Palasiya
For Respondent(s)	:	

HON'BLE MR. JUSTICE ARUN MONGA

Order

16/07/2024

Learned counsel for the petitioner, inter alia, contends that the petitioner and respondent had amicably resolved their differences by way of a written compromise deed dated 10.12.2021. Pursuant thereto a divorce decree by mutual consent under Section 13B of the Hindu Marriage Act was granted by learned Family Court. However, after dissolution of the marriage, the petitioner was confined to jail vide an order dated 31.10.2023 passed by learned Additional Chief Judicial Magistrate, Bhinmal, District Jalore for non payment of monthly interim maintenance of Rs.6,000/- for the wife and Rs.3,000/- for the two sons per month.

My attention has been drawn to the terms of the compromise wherein, it has been mutually agreed that the petitioner shall pay

a lump sum amount of Rs.8,00,000/- as one time settlement. Prima facie, thus it appears that having settled the matter by way of lump sum alimony/maintenance, the respondent is not entitled to continue to receive the monthly interim maintenance. Interim arrangement was coterminous with execution of the compromise deed, which resulted in the divorce.

It seems that the wife is being rather too harsh in seeking execution of the interim order vide which monthly maintenance was granted, notwithstanding that she herself is a young lady of 33 years old and adequately educated being B.Ed. and is thus fully equipped to earn her livelihood to fend for herself.

While on the other hand, the incapacity of the husband to pay is obvious in view of his continued incarceration since 31.10.2023. It has been more than eight months and he is still confined in jail being unable to pay his wife. His inability to pay, needless to say, has been further compounded by his continuous confinement as he is unable to make any efforts to comply with the terms of the compromise. Though it transpires that he had paid first tranche of one time settlement by way of cash of Rs.1,00,000/-, but before he could arrange for the balance of Rs.7,00,000/- he was sent to jail by a court order passed by learned Family Court. Though there are allegations made in the present petition that the respondent, during the subsistence on marriage, was herself responsible for deserting matrimonial home and was also living in adultery etc., therefore, not entitled to any monthly maintenance under Section 125 Cr.P.C., but the same are not relevant to be gone into as a compromise has been arrived and parties are now divorcees.



Issue notice. Dasti as well.

In the peculiar premise, in order to enable the petitioner to take steps to comply with his part of the compromise by making the balance payment, petitioner be produced before the learned Magistrate concerned and he shall be forthwith admitted on bail upon furnishing a personal bond to the satisfaction of the learned court below.

After admitting him on bail, further proceedings before the learned trial court shall remain stayed till the next date.

(ARUN MONGA),J

1-AK Chouhan/-