

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

CRIMINAL WRIT PETITION NO. 1294 OF 2014

Swapnil s/o. Punjabrao Wankhede & Anr. .. Petitioners

Versus

Kanchan w/o. Swapnil Wankhede .. Respondent

Mr. S.R. Chaukidar h/f. Mr.V.S. Panpatte, Advocate for the petitioners.

Mr. Rupesh Jaiswal h/f. Mr. N.S. Ghanekar, Advocate for sole respondent.

CORAM : SMT.SADHANA S. JADHAV,J.

DATED : 20.04.2015

P.C. :-

1. Heard. Rule. Rule made returnable forthwith with the consent of the parties.

2. The petitioners herein are the original appellant in Criminal Appeal No.91 of 2014, pending before the Additional Sessions Judge at Aurangabad. The petitioners herein had challenged the judgment and order

dated 09.09.2014 passed by the J.M.F.C., Aurangabad in Cri. Misc. Application No.25 of 2010 filed by the respondent herein under the provisions of the Protection of Women from Domestic Violence Act, 2005. Learned Counsel for the petitioners fairly submits that the petitioners herein question the correctness and validity of clause (3) of the operative order dated 13.10.2014, thereby directing the appellants i.e. present petitioners to immediately pay the amount from the account of the respondent. In-fact, this order has been passed on the basis of the documents produced by the respondent in the course of hearing of the appeal and the same was not available before the J.M.F.C. Learned Appellate Court at an interim stage has also directed the petitioners herein to return *Stridhan* of the respondent. In-fact, all these aspects are to be decided only after considering the evidence on record produced by both the respective parties. The order passed by the J.M.F.C., Aurangabad, was also interim order. In fact, the parties to this petition have not led any evidence in Cri. Misc. Application No.25 of 2010, whereas the Appellate Court has passed order in the nature of final order at the interim stage.

3. Learned Counsel for the respondent also fairly submits that the learned J.M.F.C. has passed *ex-parte*

order and that the present petitioners were not heard before passing of order dated 09.09.2014. In view of this, the Appellate Court ought not to have finalized the order without considering the fact that the petitioners herein were not heard by the learned J.M.F.C. In view of this, clause (3) of the order dated 13.10.2014 passed by the Additional Sessions Judge, Aurangabad, deserves to be quashed and set aside.

4. The petitioners herein shall file application before the Appellate Court within two weeks from today, requesting the Court to remand the matter to the Court of J.M.F.C. Aurangabad, thereby giving an opportunity to the petitioners to file their say in the said Cri. Misc. Application as there are disputed facts based on the records. Learned Appellate Court i.e. Sessions Judge, Aurangabad, shall decide the application seeking remand of the matter within two weeks from the date of filing.

5. In view of above directions, the petition stands allowed in terms of prayer clause (C)(i). However, it is made clear that grant of maintenance directed by learned J.M.F.C. vide order dated 09.09.2014 is not interfered with and the same is maintained. Hence, clauses (4) & (5) of order dated 09.09.2014 passed by the J.M.F.C., Aurangabad is upheld. It is further made clear that

clause (6) of the operative order dated 09.09.2014 is quashed and set aside. The same shall be reconsidered after hearing the petitioners. Learned Counsel for the petitioners, upon instructions, specifically submits that the petitioners would comply with clauses 2,4 & 5 of the operative part of order dated 09.09.2014 scrupulously. Rule made absolute in above terms.

[SMT. SADHANA S. JADHAV,J.]