

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL REVISION APPLICATION NO. 16 OF 2015**

1. Mrs. Meghana Motichand Fatarpekar,
Major,
2. Mr. Motichand L. Fatarpekar,
Major, aged 70 years,
3. Mr. Mandar Motichand Fatarpekar,
Major, aged 35 years,

All residing at House No. 383/A,
Fatorpa, Quepem, Goa.

... Petitioners

Versus

1. Mrs. Vidhya Fatarpekar,
Major, residing at
C/o Vishwanath S. Pednekar,
House No. 278, Camurli,
Bardez, Goa.
2. State,
by Public Prosecutor,
High Court, Panaji.

... Respondents

Shri Jayant Mulgaonkar, Advocate for the Petitioners/Applicants.

Shri Vilas P. Thali, Advocate for the Respondent No. 1.

CORAM:- C. V. BHADANG, J.

DATE:- 30th MARCH, 2015

ORAL JUDGMENT:

Heard. Admit. Shri Thali, the learned Counsel for the respondent no. 1 waives notice. Heard finally with the consent of the parties.

2. The petitioners in this criminal revision application are original opponents. The first respondent has filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (Act of 2005, for short) for various reliefs. The present petitioner nos. 1 and 2 are the parents-in-law of the first respondent while the petitioner no. 3 is the brother-in-law of the first respondent.

3. It appears that the first respondent had filed an application in Form No. II, on 20.09.2013 (Exhibit-1). Later the first respondent had filed an application under Section 12 (Exhibit-7) on 21.12.2013. It appears that there was also an application for interim relief filed. On behalf of the applicant, a reply came to be filed to the main application on 16.01.2014. It appears that on 18.03.2014, the applicants filed an application (Exhibit D-11) for

amendment of the reply and yet another application (Exhibit D-12) for postponement of the order on interim relief, till the application for amendment is decided. The applicants also filed a fresh additional reply (Exhibit D-13). According to the learned Counsel for the first respondent, Exhibit D-13 is on the same lines as that of the amendment sought by way of application, Exhibit D-11.

4. Be that as it may, the learned Magistrate by an order dated 20.03.2014, directed that the application for amendment i.e. Exhibit D-11 would be decided after order is passed on interim relief. By a order dated 05.05.2014, the learned Magistrate allowed the reply (Exhibit D-13), to be taken into consideration for deciding the interim relief.

5. Feeling aggrieved, the first respondent filed a Criminal Appeal No. 71/2014 before the learned Sessions Judge, Panaji. By a judgment and order dated 02.12.2014, the learned Sessions Judge partly allowed the appeal while holding that Exhibit D-12 and Exhibit D-13 cannot be taken on record and looked into, till the disposal of interim application, unless and until the fate of

Exhibit-11 is decided. The learned Sessions Judge was of the view that Exhibit D-13 is the new reply and unless the fate of the amendment application is decided, it was not proper on the part of the trial Court to consider the same.

6. Feeling aggrieved, the original opponents have come up in revision. It is submitted by the learned Counsel for the petitioners that Section 28 of the Act of 2005 provides that the Court can adopt its own procedure for disposal of an application under Section 12 or under sub-section (2) of Section 23 of the Act of 2005. It is submitted that thus, the learned Magistrate was justified in passing the order, allowing the reply to be placed on record. It is submitted that the learned Sessions Judge was in error in interfering with the said order in the absence of any material irregularity.

7. On the contrary, it is submitted by the learned Counsel on behalf of the first respondent that the applicants had already filed a reply covering both the applications dated 20.09.2013 and 21.12.2013. It is submitted that all though, the applicants were

claiming that they had not replied to the subsequent application dated 21.12.2013, the learned Magistrate has observed that they have not done so, as far as application dated 20.09.2013 is concerned. It is submitted that even otherwise, the fresh reply (Exhibit D-13), being on the same lines as that of the amendment sought to be introduced by way of application (Exhibit D-11), the reply has rightly not been permitted to be taken on record till the application (Exhibit D-11) is decided.

8. On hearing the learned Counsel for the parties and the perusal of the impugned orders, it appears that the main application as well as the application for interim relief is still pending before the learned Magistrate. Undoubtedly, Section 28 of the Act of 2005 provides that all the proceedings including proceedings under Section 12 shall be governed by the Code of Criminal Procedure. Sub-section 2 of Section 28 of the Act of 2005 provides that nothing in sub-section (1) of Section 28 of the Act of 2005 shall prevent the Court from laying down its own procedure for disposal of an application under Section 12 or under sub-section (2) of Section 23. There cannot be any manner of

dispute that the application for interim relief has to be decided expeditiously. In the present case, the application (Exhibit D-11) for amendment of reply and Exhibit D-13, which is further reply came to be filed when the matter was fixed for orders on interim relief. I find that the situation which would emerge on the basis of the orders passed is that the application for interim relief would be decided on a given set of pleadings, which may not be the same as may be available, while deciding the main application. This is because, in the event the application, Exhibit D-11 is favourably considered, there would be a different/additional set of pleadings which would be permitted to be introduced. Such a situation cannot be countenanced. The learned Counsel for the applicants submitted that he will not press for the reply at Exhibit D-13 and will only press the application at Exhibit D-11.

9. In such circumstances, I find that it would be appropriate that the learned Magistrate considers the application, Exhibit D-11, on its own merits and then decides the application for interim relief. This would ensure fair opportunity to both the parties. It is needless to mention that the first respondent would

be entitled to file reply to the application Exhibit D-11 if not already filed. The revision application is allowed, in the aforesaid terms.

The learned Magistrate shall decide the application, Exhibit D-11 and the application on interim relief as expeditiously as possible and preferably within a period of one month, from the receipt of this Order.

10. The revision application is disposed of in the aforesaid terms.

C. V. BHADANG, J.

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