

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 33 OF 2015

MRS. PRAVITA NAGVEKAR.

... Petitioner

Versus

MR. GANESH NAGVEKAR.

... Respondent

Ms. Asha Dessai, Advocate for the Petitioner.

Mr. Ashwin D. Bhobe, Advocate for the Respondent.

CORAM : C. V. BHADANG, J.

DATE : 14th DECEMBER, 2015

ORAL ORDER:

By this petition, the petitioner is challenging the judgment and order dated 27.02.2015, passed by the learned Additional Sessions Judge, Mapusa in Criminal Appeal No. 177/2014. By the impugned judgment, the appeal filed by the respondent has been partly allowed, thereby, modifying the order dated 09.12.2014, passed by the learned Judicial Magistrate First Class, Mapusa in Criminal Case No. OA/1521/DVA/2014/B.

2. The brief facts are that the petitioner had filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (the Act of 2005, for short) against the respondent for various reliefs. It appears that the petitioner filed an application (Exhibit D-4) for certain interim reliefs therein. By an order dated 09.12.2014, the application (Exhibit D-4) was partly allowed and consequently, the respondent was restrained from forcibly taking possession of the residential house, namely Sonar Villa and a shop by name Zevar, alongwith stock in the shop. The respondent was further restrained from entering Sonar Villa at Guirim, Mapusa and the shop, Zevar, near Mapusa Civil Court, Mapusa. He was further restrained from interfering with the business of the petitioner in the shop, Zevar. The respondent was further restrained from obstructing the petitioner from conducting exhibitions and shows relating to her business and was also restrained from physically and sexually abusing the petitioner.

3. Feeling aggrieved, the respondent challenged the same before the learned Sessions Judge. That appeal came to be partly

allowed. The learned Sessions Judge has set aside the part of the order passed by the learned Magistrate, restraining the respondent from entering Sonar Villa and also the shop, Zevar. The order restraining the respondent from obstructing the petitioner from conducting exhibitions and shows relating to her business and also restraining the respondent from physically and sexually abusing the petitioner has been confirmed. The respondent is further directed not to remove or damage the CCTV cameras installed in the said residential house and the shop. Feeling aggrieved by the said order, the petitioner is before this Court.

4. I have heard Ms. Dessai, the learned Counsel for the petitioner and Mr. Bhobe, the learned Counsel for the respondent. With the assistance of the learned Counsel for the parties, I have perused the impugned judgment passed by the learned Magistrate as well as the learned Additional Sessions Judge.

5. It is submitted by Ms. Dessai, the learned Counsel for the petitioner that the respondent is illegally interfering with the business in the shop, Zevar and is also intermeddling with the

cash. It is submitted that the respondent is committing theft in the shop. It is submitted that the respondent is interfering with the business of the petitioner, in as much as, he is obtaining addresses of the customers and recovering payments, which are due to the petitioner. It is submitted that this would amount to an economic abuse. It is submitted that in such circumstances, the learned Appellate Court could not have interfered with the order restraining the respondent from interfering with the possession of Sonar Villa and also the shop, Zevar. It is submitted that the petitioner is conducting her business in the same shop under the name and style as "Pravita's".

6. On the contrary, it is submitted by Mr. Bhobe, the learned Counsel for the respondent that the establishment license of the shop, Zevar is standing in the name of the respondent. It is submitted that the shop was attached by the Bank in a proceeding under the SARFAESI Act, in which the respondent has deposited the entire outstanding amount. It is submitted that Sonar Villa and the shop, Zevar belongs to the respondent and under the provisions of the Act of 2005, the respondent cannot be entirely

excluded from the residential house as well as the shop. It is submitted that even assuming that it was a shared household, the petitioner cannot justifiably seek the total exclusion of the respondent from the shop as well as the residential house.

7. I have considered the rival circumstances and the submissions made. At the outset, it needs to be mentioned that the present petition arises out of an interim order passed by the learned Magistrate. By a subsequent order, the application before the learned Magistrate was dismissed in default and an application for restoration of the said application is said to be pending. In such circumstances, the parties submitted that this petition be decided on merits. Be that as it may, admittedly, the establishment license of the shop, Zevar is standing in the name of the respondent and it is also not disputed that the respondent had deposited the outstanding amount after the shop was attached under the SARFAESI Act. A perusal of the impugned order would show that there are serious disputes between the parties. There are counter complaints registered, including the petitioner filing a complaint against the respondent alleging rape and the respondent

filing a complaint against the petitioner alleging offence under Section 8 of the Children's Act. It appears from the record that the matter was referred to the Mediator and some minutes were also recorded. However, eventually, the settlement did not materialise.

8. Coming back to the present dispute, in view of the fact that the establishment license is standing in the name of the respondent, he could not have been entirely restrained from the said shop and the residential house. The perusal of the order passed by the learned Appellate Court would show that the respondent is restrained from obstructing the petitioner from conducting her exhibitions and shows relating to her business, which she is carrying under the name and style as "Pravita's". Obviously, the part of the order restraining the respondent from physically and sexually abusing the petitioner is also confirmed. Not only that, the learned Sessions Judge has directed the respondent not to remove or damage the CCTV cameras installed in the residential house and the shop. Thus, in my considered view, having regard to the stage at which the matter is standing,

wherein only the interim application is decided, the impugned order sufficiently takes care of the interest of the petitioner and at the same time also takes care of the fact that the respondent cannot be excluded from the residential house, Sonar Villa and the shop, Zevar. In such, circumstances, I do not find that any case for interference under the extra ordinary jurisdiction of this Court is made out, as the petitioner has not demonstrated that there is any gross irregularity in the order, resulting in miscarriage of justice.

9. In the result, the Criminal Writ Petition is dismissed. It is made clear that the learned Magistrate shall not be influenced by any of the observations made herein, at the trial of the main application under Section 12 of the Act of 2005. All the rival contentions of the parties are left open, to be urged before the learned Magistrate.

C. V. BHADANG, J.