

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 149 OF 2015

CONSTANCIO FERNANDES AND ANR., ... Petitioners

Versus

SMT.MARIA ROSARIO SARITA XAVIER DE
ARAUJO E MENEZES AND ANR., ... Respondents

Mr. Ganesh R. Naik, Advocate for the Petitioners.

CORAM:- C. V. BHADANG, J.

DATE : 21st NOVEMBER, 2015

ORAL ORDER:

Heard Mr. Naik, the learned Counsel for the petitioners.
With the assistance of the learned Counsel for the petitioners, I
have gone through the judgment passed by the learned Magistrate
as also the judgment and order passed by the learned Sessions
Judge.

2. At the outset, it is necessary to state that according to
the learned Counsel for the petitioners, the petitioner no. 1 is only
aggrieved by the part of the order by which, the petitioner no.1

(respondent no.1 before the learned Magistrate) is directed to execute a bond for Rs.30,000/- with one surety in the like amount with an undertaking that he shall not commit any act of domestic violence. Thus, the petitioners are not challenging the rest of the order passed by the learned Sessions Judge.

3. The brief facts are that the respondent no. 1 is the mother of the petitioner no. 2 and mother-in-law of petitioner no. 1 herein. The respondent no. 1 had approached the learned Magistrate with an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (the Act, for short) for various reliefs. The learned Magistrate by an interim order dated 07.08.2014 had restrained the petitioners from committing any acts of domestic violence or aiding or abetting in commission of any acts of domestic violence against the respondent no. 1 herein. The petitioners have also been directed to restore back the shared household without any hindrance as undertaken in the reply at para 8 filed by the petitioners. The petitioner no. 1 (respondent no. 1 before the learned Magistrate) was restrained from entering the shared household except in the presence of and

alongwith petitioner no. 2 (respondent no. 2 before the learned Magistrate).

4. It appears that feeling aggrieved, the petitioners challenged the same before the learned Additional Sessions Judge, South Goa, Margao in Criminal Appeal No. 92/2014/I. By a judgment and order dated 13.04.2015, the appeal came to be partly allowed in the following terms:

"The Appeal is partly allowed.

The interim order under Section 18 of PWDV Act passed by the learned Magistrate restraining the respondents from committing any acts of domestic violence or aiding or abetting in commission of any acts of domestic violence against the applicant and order of restoration of shared household back to the applicant are maintained.

The order restraining the respondent no. 1 from entering the shared household except in the presence of and alongwith the respondent no. 2

is quashed and set aside.

The respondent no. 1 is directed to execute a bond for Rs.30,000/- with one surety in the like amount with an undertaking that he shall not commit any act of domestic violence.”

As noticed earlier, the petitioner no. 1 herein is only aggrieved by the direction for execution of the bond of Rs.30,000/-.

5. It is submitted by Mr. Naik, the learned Counsel for the petitioners that in the absence of there being any *prima facie* case about the petitioners having indulged into acts of domestic violence, such a direction of execution of the bond could not have been passed. The learned Counsel has referred to Section 19(3) of the Act in order to submit that in terms of this Section, such a bond can be directed under Chapter VIII of the Criminal Procedure Code. It is submitted that once the Sessions Court has observed in para 20 of the judgment that the allegations about abuse were not supported by domestic violence report or there was no specific

allegations of violence, the learned Sessions Judge could not have directed the petitioner no. 1 to execute the bond.

6. I have considered the circumstances and the submissions made and I do not find that the same can be accepted. There cannot be any manner of dispute with the proposition that unless and until, the learned Magistrate comes to the conclusion that there is an act of domestic violence indulged into, no relief can be granted under the provisions of the said Act. At the stage of granting interim relief, the learned Magistrate will have to consider this aspect on the basis of *prima facie* material available on record. The provisions of sub Sections 3 and 4 of Section 19 of the Act would make it further clear that the Magistrate in appropriate case may direct the respondent to execute a bond, with or without sureties, for preventing the act of domestic violence. The power exercised by the learned Magistrate under these sub Sections is in the nature of preventive relief. The learned Sessions Judge has considered about there being an allegation made of the door of the shared household being locked and in that view of the matter, has found in para 20 that it is just

and proper that the provisions of Section 19(3) of the Act are invoked and the petitioner no. 1 is directed to execute the bond for preventing any acts of domestic violence. It is submitted on behalf of the petitioners that execution of bond would tantamount to an admission that the petitioners have indulged into the acts of domestic violence. The submission cannot be accepted. This is because, the petitioner no.1 would execute such a bond in consequence to an order directing him to execute the bond. Considering the overall circumstances, and the submission made, I do not find that any case for interference in the exercise of the extra ordinary jurisdiction of this Court is made out.

7. In the result, the petition is dismissed. Needless to mention that all the contentions on merits are kept open and the petitioners will get every opportunity to contest the main application, in accordance with law.

C. V. BHADANG, J.

EV