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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 3 OF 2015**

Abhay Agarwal ... Petitioner

Versus

State of Maharashtra and Ors. ... Respondents

Ms. Rushita Jain i/by Law Global for the petitioner.

Mr. R.N. Gite for respondent no. 2.

Ms. Sudha Dwivedi for respondent nos. 3 and 4.

Mr. A.R. Patil, A.P.P. for the State.

**CORAM : M.L. TAHALIYANI, J.
DATED : MAY 06, 2015**

P.C.

Admit. Heard finally.

2. This petition is filed against the order passed by the learned Sessions Judge in Appeal against the order of Magistrate passed under the Protection of Women from Domestic Violence Act. The learned Magistrate has granted some monetary and residence relief to respondent no.2 Menka Agarwal. The total amount of relief granted to respondent no.2 is Rs.17,000/-. Rs.7,000/- are granted by way of maintenance and Rs.10,000/- are granted for residence.

3. During the course of arguments, it is brought to my notice that

hearing of the main application has already begun. Respondent no. 2/complainant has already tendered her affidavit of evidence in the trial court. As such, it is necessary that the trial court shall be allowed to decide the application/complaint as early as possible.

4. As far as execution proceedings for recovery of arrears of maintenance are concerned, it is submitted on behalf of the petitioner that petitioner has suffered from heart attack well as paralytic attack. In this regard, it can be mentioned that this issue can be raised before the trial Magistrate and the learned Magistrate can take into consideration all the facts before passing an order of attachment or sending the petitioner to civil prison. In my opinion, it is not necessary for this court to pass any order in the present petition at this stage.

5. The best option open to the trial Magistrate is to decide the application finally as early as possible and not later than sixty days from the date of receipt of this order. Learned Magistrate may consider the physical and mental condition of the petitioner while disposing of the application of respondent no. 2 for execution of the earlier order with regard to arrears of interim maintenance. Writ petition stands disposed of. Ad interim order stands vacated.

(JUDGE)