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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL WRIT PETITION NO.1239 OF 2014**

Mrs. Vidhya Nilesh Koppiker

..Petitioner

Vs.

The State of Maharashtra & Ors.

..Respondents

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Mr. Laxman Venkatesan, for Petitioner.

Mr. Vivek S. Babar, for Respondent Nos.2 to 4.

Mr. H.J. Dedhia, APP for Respondent No.1-State.

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**CORAM: A.S. GADKARI, J.**

**DATE : 17<sup>th</sup> July 2015.**

**P.C.**

Heard the learned Counsel for the Petitioner, the learned Counsel for the Respondent Nos.2 to 4 and the learned APP for the State and with the help of learned Counsel for the parties also perused the entire record annexed to the petition.

2           The petitioner-wife has filed the present petition under Article 227 of the Constitution of India read with Section 482 of Cr. P.C. challenging the order dated 20.12.2013 passed by the Metropolitan Magistrate, 29<sup>th</sup> Court, Dadar, Mumbai on Application dated 6.7.2013

thereby rejecting the said Application preferred by the petitioner and has also imposed a cost of Rs.10,000/- upon the petitioner.

3           The record discloses that the petitioner-wife has filed an Application under Section 12 of The Protection of Women from Domestic Violence Act, 2005 bearing Case No.60/Misc of 2010 on 16.6.2010. The petitioner moved therein an Application for interim relief as contemplated under Section 23 of the said Act. By order dated 2.7.2011, the Trial Court rejected the said Application on the ground that the petitioner herein was earning Rs.16,000/- p.m. The petitioner being aggrieved by the said order dated 2.7.2011, preferred an appeal bearing Criminal Appeal No.135 of 2011 in the Court of Sessions, Greater Mumbai. The learned Additional Sessions Judge, Sewree, Mumbai by its judgment and order dated 5.12.2011, partly allowed the said appeal and directed that the respondent no.2 herein i.e. father of the child and husband of the petitioner to pay the maintenance at the rate of Rs.2000/- per month to the child till the culmination of the main proceedings instituted by the wife. The petitioner thereafter preferred a criminal writ petition bearing no.757 of 2012 in this Court challenging the order passed by the Additional Sessions Judge dated 5.12.2011 granting monthly maintenance to the child. The learned Single Judge of this Court by its order dated 19.12.2012 was pleased to enhance

the maintenance amount from Rs.2000/- to Rs.5000/- per month to be paid to the said child by the respondent no.2-father, effective from 5.12.2011. By the said order dated 19.12.2012, the High Court has further directed that the matter before the JMFC be disposed of within three months from the date of issuance of order with further specific direction that both sides shall not seek any adjournment. It appears to me that the petitioner-wife has failed to adhere to the said directions.

4           The record further discloses that the petitioner-wife instead of adhering to the direction given by this Court, has subsequently moved a Misc. Application No.67 of 2013 in Criminal Appeal no.135 of 2011 before the learned Sessions Court for modification or speaking to the minutes of order dated 19.12.2012 passed by High Court, enhancing the maintenance. The said Application was rejected by the Sessions Court by a speaking order dated 23.3.2013. The petitioner thereafter filed the present Application on 6.7.2013 before the Trial Court in the main Application i.e. Case No.60/Misc. of 2010 thereby praying for various reliefs. The learned Metropolitan Magistrate by its order dated 20.12.2013 rejected the said Application.

5           At the outset, it is to be noted here that the petitioner-original applicant instead of following and adhering to the directions given by the

High Court in the petition no.757 of 2012 by its order dated 19.12.2012, thereby co-operating the learned Trial Court in disposing of her Application No.60/Misc. Of 2010, is unnecessarily filing applications before various foras. In my considered opinion the petitioner is unnecessarily protracting the litigation. By this time, the main application ought to have been decided, if the petitioner would have adhered to the directions of the High Court. By the impugned order dated 20.12.2013, the learned Trial Court, after taking into consideration all the aspects of the matter, has rejected the said Application and has imposed cost of Rs.10,000/- upon the petitioner.

**6** After order dated 19.12.2012 passed by this High Court in Criminal Writ Petition No.757 of 2012, the petitioner has unnecessarily filed the said Misc. Application No.67 of 2013 in Criminal Appeal No.135 of 2011 before the Sessions Court and also the present Application dated 6.7.2013 before the Trial Court in the main Application which according to me are filed only to harass the respondent no.2 herein and with a view to protract the litigation. I am of the considered opinion that the petitioner ought to have appeared before the Trial Court and cooperated it, in deciding her own Application bearing No.60/Misc./2010. I am of the further considered opinion that filing of the said two Applications by the petitioner initially before the Sessions Court bearing Application no.67 of

2013 and subsequently Application dated 6.7.2013 are wholly ill advised. In that view of the matter, the cost awarded by the Trial Court by the impugned order dated 20.12.2013 is fully justified.

7           As stated hereinabove, I am of the considered opinion that the petitioner is ill-advised to protract the litigation and despite specific directions given by the High Court, she is being advised unnecessarily to file applications before the Lower Courts, which are proved to be meritless. As a matter of fact, in my opinion the cost awarded by the Trial Court by its order dated 20.12.2013 of Rs.10,000/- is inadequate and I was inclined to enhance the same as according to me it is clearly abuse of process of law. However, it appears to me that the petitioner is ill-advised to file the said applications before the Lower Courts instead of complying with the directions of the High Court and therefore I refrain myself from enhancing and imposing exemplary cost on the petitioner.

8           Apart from the facts mentioned hereinabove, a minute perusal of the impugned order discloses that the learned Trial court after taking into consideration various aspects of the matter has rightly come to conclusion while rejecting the Application dated 6.7.2013 filed by the petitioner. I find no infirmity in the impugned order passed by the learned Trial Court dated 20.12.2013. In that view of the matter, the present petition being devoid of

merits is accordingly dismissed.

**9** As stated hereinabove, the order dated 19.12.2012 passed in the Criminal Writ Petition No.757 of 2012 has not been complied with because of ill-advice given to the petitioner, the Trial Court is hereby directed to proceed with the main Application filed by the petitioner and take it to its logical end as per the provisions of law on its own merits within three months from the date of receipt of authenticated copy of this order from either parties. The Trial Court is specifically directed to dispose of the case bearing no.60/Misc./2010 in the stipulated period as the said application is pending on its file since 16<sup>th</sup> June 2010.

**(A.S. GADKARI,J.)**