

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1865 OF 2010

Mr. Jayantilal Kanji Nagda

...Petitioner

: V/S :

1. The State of Maharashtra and anr.

.....Respondents

Mr. M.U. Swar, Advocate for the petitioner.

* * * * *

Coram :- Smt. R.P. SondurBaldota, J.

8th May, 2015.

P.C. :-

1). This petition filed under Article 227 of the Constitution of India, is directed against the order dated 19th December, 2009 passed by the Sessions Court in Appeal No. 407 of 2009. By the impugned order, the Sessions Court set aside the order of the Learned Magistrate dismissing the application of the respondent for interim reliefs in the proceedings filed under Section 12 of the Domestic Violence Act ("D.V. Act" for short).

2). The marriage of the parties to the proceedings took place on 2nd March, 1972. The respondent started residing separate from the petitioner since 14th April, 1973. That means, it lasted barely for an year.

There is a daughter born from the wedlock. The respondent has been receiving maintenance from the petitioner enhanced from time to time. No proceeding for divorce is filed by either party.

3). The respondent, 34 years after the separation filed proceedings under the D.V. Act being Complaint No. 73/Misc/2008 seeking various reliefs and applied for interim maintenance of Rs.10,000/- per month. The Learned Magistrate dismissed the application by his order dated 7th May, 2009 observing that, when the parties resided separately from 1973 the question does not arise for causing domestic violence. Hence, applicant failed to make out, *prima-facie* case and hence she is absolutely not entitled for relief claimed. He also noted that, the order awarding maintenance enhanced from time to time upto Rs.1,000/-per month is subsisting and the respondent had failed to establish that the petitioner owns a grocery shop.

4). The Sessions Court found the order of the Learned Magistrate cryptic and not sustainable. It observes at para-14 :

“Section 3 of Domestic Violence Act is an inclusive definition of domestic violence. It also includes endangering health, safety, life, limb or well being of aggrieved person. Such an endangering can be by any omission or commission or by willful conduct. Section 23 confers right on the Learned Magistrate to pass interim orders till the proceedings u/s 12 of the Act is disposed off. Such orders can be passed at prima face stage that respondent has committed an act of domestic violence. Thus even the past conduct of husband is brought in the

sweep of section 23 of Domestic Violence Act. Section 23 of the Act also does not restrict the Magistrate in the matter of grant of interim reliefs. The Magistrate can grant monetary reliefs also and this can include maintenance on the footing of section 125 of Cr.P.C. The monetary reliefs granted u/s. 23 of the Act is in addition to other reliefs obtained by aggrieved party. In addition to adequate, fair and reasonable maintenance the wife is also entitled to right of residence in shared household or to separate arrangement of residence to be made by husband.”

5). Considering the long gap of 34 years, there cannot be any infirmity in the view of the Learned Magistrate, that after such a long separation, prima-facie, there cannot be domestic violence. Further, perusal of the complaint shows that, the solitary incident alleged therein is against the mother and sister of the petitioner, which incident had taken place in the absence of the petitioner. Thus on merits also, prima-facie, there is no substance. Apparently, after the D.V. Act came into force, the respondent just took a chance at getting additional maintenance from the petitioner. However, in the facts of the case, the learned Magistrate has correctly held that she needs to establish her case by appropriate evidence which can be only at the trial.

6). For the reasons above, the petition is allowed in terms of prayer clause (b).

(SMT. R.P. SONDURBALDOTA, J)