

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3012 OF 2014

Mr. Dayaram Ramprasad Saroj ...Petitioner

Versus

Mrs. Maya Dayaram Saroj & Anr. Respondents

Mr. Amar H. Nagi for the Petitioner.
Mr. Prashant Kamble i/b Mr. V.V. Purwant,
for Respondent No.1.
Mr. V.B.K. Deshmukh, APP for Respondent No.2-State.

CORAM:-M.L. TAHALIYANI, J.

DATED : 18th MARCH, 2015.

P.C.

Heard learned Advocate for the Petitioner and learned Advocate for Respondent No.1 and learned APP for Respondent No.2-State. Admit. By consent taken up forthwith for final hearing.

2. The Petitioner is aggrieved by the order passed by the learned Judicial Magistrate in an application filed by the Respondent No.1 under section 12 of the Protection of Women from Domestic Violence Act, 2005. The operative part of the order runs as under :

“Opponent is directed not sale or create third

party interest regarding the said room till conclusion of trial.

Opponent is also directed to allow applicant for access in the said room.”

3. Obviously opponent before the learned Magistrate was the Petitioner. Petitioner filed an appeal against the said order before the Appellate Court. Appellate Court has dismissed the appeal and therefore, the Petitioner is before this Court under section 482 of Criminal Procedure Code and Article 227 of the Constitution of India. Before dealing with the merits of the order what is necessary to be stated here is that the learned counsel for the Petitioner has made a statement in open Court that room in question has already been sold by the Petitioner much before the date of order of the Judicial Magistrate.

4. It is therefore, submitted that question of now creating third party interest or allowing Respondent No.1 to access the said room does not arise. Learned counsel for Respondent No.1 and learned APP for Respondent No.2-State have submitted that room has been disposed of by an agreement on a stamp paper of Rs.100/- and therefore, it could not be a valid sale.

5. Issue in question is as to whether the Petitioner could comply the order passed by the Magistrate. Whether possession was passed under a valid document or under a document in which requisite stamp duty and registration charges were not paid is not the question to be considered at this stage.

6. It may also be noted here that Respondent No.1 in-person had been in this Court on most of the dates of hearing. It was submitted by Respondent No.1 herself that somebody else is staying in the room in question and that the Petitioner is staying in rented house.

7. In view of what has been stated by me hereinabove, it is abundantly clear that order of learned Magistrate cannot be complied with and it needs to be set aside. Hence, I pass following order :

ORDER

Orders passed by the learned Magistrate and Additional Sessions Judge are set aside. Learned Magistrate is directed to proceed with the main application as expeditiously as possible and decide the same within a period of six months.

8. Writ petition stands disposed of accordingly.

(JUDGE)