

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. WRIT PETITION NO. 4633 OF 2015

Mrs. Zahida w/o Akhlaque Ahmed
Choudhary ... Petitioner.

V/s.

Mr. Akhlaque Ahmed Mohd. Yunus
Choudhary & Anr. ... Respondents.

Mr. Sharif Shaikh, Advocate for the Petitioner.
Mr. Imtiyaz Patel, Advocate for Respondent No.1.
Mr. D. P. Adsule, APP for the State.

CORAM : A.V. NIRGUDE, J.

DATE : 09th DECEMBER, 2015.

P.C. :

1 Heard. The only question that arises in this petition is whether an order of temporary custody under section 21 of the Protection of Women from Domestic Violence Act, 2005 can be passed, although the Petitioner has lost in her application, seeking custody of her children under the provisions of the Guardians and Wards Act, 1890.

2 The facts leading to this litigation, in short, are as under :

Petitioner is the resident of Mumbai. She was married earlier to Respondent No.1. This couple were blessed

with two children. Respondent No.1 - husband stays in Dhaka. The children also stay with him. The petitioner has filed application under various provisions of the Act before the learned Metropolitan Magistrate, 66th Court, seeking various reliefs. She sought an interim order for temporary custody of the children. She wants that her husband-respondent no.1 should bring the children to Mumbai so that she would meet them during the vacations' period. She states that there is vacations to the children school and that they have Christmas vacation from 11th December, 2015 to 4th January, 2016. The learned Magistrate allowed her application but the learned Sessions Judge rejected it only on the ground that the wife's application filed under the provisions of Guardians and Wards Act, 1890 was rejected even by this court.

3 Section 21 of the Domestic Violence Act, 2005 reads as under :

“21. Custody orders. – Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent :

Provided that if the Magistrate is of the opinion that any visit of the respondent may be

harmful to the interests of the child or children,
the Magistrate shall refuse to allow such visit.

This section provides an non-obstinate clause. Therefore, it is clear that what is stated in section 9 of the Guardians and Wards Act, 1890, would not affect the powers of the Court given under section 21 of the Domestic Violence Act, 2005. So an order under section 21 of the Act is possible and permissible.

4 The relief sought by the Petitioner is innocuous. She only wants to meet her children during their school vacations' time. Therefore, this writ petition is allowed in terms of the following order :

5 Respondent No.1 shall bring his children to Mumbai during the vacation times of the school i.e. in summer and winter vacations.

6 The writ petition is allowed in the above terms and stands disposed of accordingly.

(A.V. NIRGUDE, J.)

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