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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLN NO. 3 OF 2016

Mr Ravindra Ganpat Lavande and others ..Applicants.

Vs

Mrs Anita Ravindra Lavande & Anr ..Respondents.

Mr Vijay Thakur Singh for the applicants.

Mr Deepak Thakur, APP for the Respondent-State.

CORAM : A.S.GADKARI, J.

DATE : 8th March, 2016

P.C.

1) The present revision application is directed against the judgment and order dated 4.12.2015 passed by the learned Additional Sessions Judge, Greater Mumbai in Criminal Appeal No. 39/2015 thereby confirming the order passed by the Metropolitan Magistrate, 12th Court, Bandra Mumbai in CC No.65/DV/2013,

dated 9.9.2014, thereby granting interim relief to the respondent no.1.

2) The respondent no.1 is the legally wedded wife of the applicant no.1. It appears from the record that due to matrimonial discord, the respondent no.1 along with children was staying separately from the applicant no.1. The respondent no.1, thereafter, preferred an application under section 23 of the Protection of Women from Domestic Violence Act, 2005 (for the sake of brevity “the said Act”) in the Court of Metropolitan Magistrate, 12th Court, Bandra, Mumbai in CC No.65/DV/2013. The respondent no.1 has contended that the applicant no.1 is addicted to liquor and used to cause physical and mental harassment to her. As the life of respondent no.1 was made miserable by the applicant no.1, the respondent no.1 had to leave her matrimonial home on 1.10.2011. In the application preferred under section 23 of the said Act, the respondent no.1 has claimed maintenance of Rs. 20,000/- per month and also the right to reside in the matrimonial home, a description of which is given in the said application.

3) The learned trial Court, after taking into consideration

the facts of the case in hand, was pleased to allow the interim application preferred by the respondent no.1. The learned trial Court by its order dated 9.9.2014 has prohibited the applicants herein from aiding and abetting the commission of act of domestic violence against respondent no.1 till the final disposal of main application or till the further orders passed by the trial Court. The trial Court has also directed the applicant no.1 to allow the respondent no.1 i.e. wife with her children namely Prabhakar and Akshata to reside in the house situated at Jafar Buva Colony, Kadeshwari Mandir Marg, Bandra (West), Mumbai, till the further orders or till the final disposal of the said application.

4) Against the interim order passed by the learned trial Court, the applicants herein preferred Criminal Appeal No. 39/2015 in the Court of Sessions for Greater Mumbai at Mumbai. The Appellate Court by its judgment and order dated 4.12.2015 was pleased to dismiss the said appeal, confirming the order passed by the Trial Court.

5) The learned counsel for the applicants submitted that, as a matter of fact and as per the observations made by the Trial Court

in its order dated 9.9.2014, the respondent no.1 is residing separately since 1.10.2011. That the respondent no.1 is residing at Mira Road and, therefore, the Trial Court at Bandra has no jurisdiction to entertain the said application. He further submitted that the applicant no.1 has sold the said room by a sale deed dated 9.5.2014 to his cousin-sister namely Smt. Prajakta P. Jadhav. He submitted that the said sale deed was executed much prior to the order passed by the Trial Court on 9.9.2014. He submitted that as the said purchaser Smt. Prajakta Jadhav is residing in the said room, he is unable to comply with the order passed by the Trial Court and confirmed by the Appellate Court. He submitted that instead of directing the applicant no.1 to comply with the order passed by the Trial Court the said order may be stayed and the proceedings pending on the file of the Trial Court may be expedited.

6) I have perused the documents annexed to the present application. It appears to me that the alleged sale deed dated 9.5.2014 executed between Smt. Prajakta Jadhav and the applicant no.1 herein is created only with a view to defeat the legitimate right of the respondent no.1 which is bestowed upon her under the law.

The said agreement is not registered. It further appears that during the pendency of the interim application under section 23 of the Act in CC No.65/DV/13, the applicant no.1 has executed the said alleged sale deed. Though the applicant has stated that he has received the amount of Rs.4,30,000/- as stated in the said agreement during the span of earlier two years as hand loan, no receipt in support of the said contention has been produced on record to infer that the said fact mentioned in the agreement prima facie true. I am of the considered opinion that the said agreement is a bogus and sham document created by the applicants only with a view to deprive the respondent no.1 of her legitimate right.

7) As far as jurisdiction of the Court to entertain the application at Bandra is concerned, the said aspect can be gone into by the Trial Court at the time of hearing of the main application. The applicants have preferred the present revision against the interlocutory order passed by the Trial Court dated 9.9.2014 and confirmed by the Appellate Court by its judgment and order dated 4.12.2015. A minute perusal of both the orders passed by the Courts below demonstrates that there is no impropriety or illegality

committed by the Courts below either of law or on facts and the interference by this Court in its revisional jurisdiction is unwarranted. Present revision application being devoid of merits is accordingly dismissed.

(A.S.GADKARI, J.)