

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 149 OF 2015

Sandeep Bharadwaj. ... Petitioner.
Versus
Dhanashree Bharadwaj & anr. ... Respondents.

Ms. Shaheen Khan, advocate for petitioner.

Mr. Siddhartha Shah, advocate for respondent No. 1.

Ms. A.T. Javeri, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : JUNE 13, 2016

P.C.:

1 Heard the learned Counsel for the Petitioner and learned Counsel for the respondent. Perused the papers.

2 Rule. Rule is made returnable forthwith with the consent of the parties.

3 The Petitioner herein happens to be the respondent in Criminal Misc. Application No. 450 of 2013 filed by the respondent. In a nutshell, the facts of the case are as follows :

(i) The Petitioner herein has got married to the respondent on 21st October, 2004. The couple was blessed with a son on 31st May, 2006. That the couple had moved to United States of America in August, 2005 and the respondent had given birth to their first child.

(ii) It is the case of the Petitioner that on 21st October, 2010 the respondent herein had returned to India alongwith their son Dron. On 10th October, 2013, the respondent herein had filed a Petition under the provisions of the Protection of Women from Domestic Violence Act. It was alleged that the present petitioner has subjected the original complainant to cruelty. It was also alleged that the Petitioner had neglected and refused to maintain them inspite of having sufficient income.

(iii) The application was filed under section 12, 18, 19, 20, 21, 22 and 23 of the Protection of Women from Domestic Violence Act. The Petitioner herein has filed his say which was marked as Exh. 26. He

has denied all the facts. On 13/5/2014 he had come to India to take the respondent and his son Dron.

(iv) On 4th June, 2014 the respondent herein had filed an application for seeking interim monetary relief towards food, clothes, etc. for herself and her son. It is pertinent to note that on the next scheduled date i.e. on 18th June, 2014 the learned Counsel appearing for the Petitioner had filed an application seeking adjournment for a period of 2 weeks. The respondent herein had filed her say.

(v) In the say filed by the respondent, it was specifically contended that the present petitioner had filed petition in the Court in USA and that the respondent had to remain present before the said Court, which had caused her financial, physical as well as emotional hardship. It was also contended by the respondent that the Petitioner is protracting the proceedings without there being any sufficient cause.

(vi) The learned Court had taken into consideration that this was the first application for adjournment and had granted application

seeking adjournment by way of last chance. It is pertinent to note that on the same day, the learned Magistrate had passed order directing the Petitioner to pay maintenance of Rs. 50,000/- per month to the respondent and her son.

(vii) Being aggrieved by the said Judgment and Order, the Petitioner has filed Criminal Appeal No. 126 of 2014 before the Court of Additional Sessions Judge at Raigad-Alibag. It appears that the main contention of the Petitioner was that after allowing the application seeking adjournment, the order of paying an interim maintenance was passed, although the same Magistrate, on the same day had granted two weeks' time by way of last chance.

(viii) Learned Additional Sessions Judge, Raigad-Alibag had dismissed the appeal filed by the Petitioner. Hence, this Writ petition.

4 Perused the Judgment and Order dated 24/11/14 passed by the Additional Sessions Judge, Raigad-Alibag. It appears from the perusal of the Judgment and Order that the learned Appellate Court had considered the Appeal on merits. It was specifically observed by the

learned Appellate Court in paragraph 13 that the Petitioner is having a good bank balance and that the Petitioner was arrested in USA on the complaint filed by the complainant. Thereafter, the Petitioner had filed the divorce petition.

5 Without going into merits of the matter, all that needs to be considered by this Court, at this stage, is as to whether the Petitioner has been given fair opportunity to contest the application seeking interim maintenance, especially after the same judge had adjourned the matter for two weeks. The learned Counsel for the Petitioner rightly submits that irrespective of merits of the matter, the Petitioner deserves a right to present his case before the Magistrate which has been denied to him and the same needs to be revived.

6 This Court (Coram : Smt. Sadhana S. Jadhav, J) by an order dated 21/9/2015 had granted interim relief in favour of the Petitioner in as much as the grant of maintenance towards the respondent wife was stayed for a period of four weeks or till the

appearance of the lawyer. However, this Court had directed the Petitioner to pay 50% of the interim maintenance i.e. Rs. 25,000/- per month, which would be deemed to be the maintenance for the son Dron. It was specific contention of the Petitioner that he had reliably learnt that the respondent had sufficient source of income.

7 The learned Counsel for the Petitioner as on today submits that the Petitioner has been paying the maintenance towards his son Dron. However, there are certain arrears, which the learned Counsel for the Petitioner upon instructions submits, would be cleared by 28th June, 2016.

8 In view of this, the matter deserves to be remanded to the trial court i.e. to the court of Judicial Magistrate First Class, Panvel to give fair opportunity to the respondent to substantiate his contention that the respondent/original complainant does not deserve maintenance during the pendency of the proceedings under the provisions of the Protection of Women from Domestic Violence Act.

9 The learned Trial Court shall decide the application challenging the grant of interim maintenance after hearing the Petitioner and taking into consideration his contention without being influenced by the observations of the Sessions Court in the Criminal Appeal or any observations made by this Court.

10 The learned trial Court shall decide the application challenging interim maintenance within 8 weeks from the date of receipt of this order. In the meanwhile, the Petitioner shall continue to pay the maintenance towards son Dron and shall clear the arrears till June 2016 at the rate of Rs. 25,000/- per month.

11 Rule is made absolute in the above terms. The Writ petition is allowed and disposed of with the above directions.

Office to communicate this order to the concerned court forthwith.

(SMT. SADHANA S. JADHAV,J)