

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.602 OF 2016

Rajendra Lalchand Jain		Petitioner
V/s.		
Pooja Rajendra Jain & Anr.		Respondents

Mr. Suryaprakash H. Mishra for the Petitioner.

Mrs. Pooja R. Jain, Respondent No.1, is present in person.

Mrs. A.S. Pai, A.P.P., for Respondent No.2-State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 18TH FEBRUARY 2016.

P.C. :

1. The Petitioner has challenged the order passed by the Additional Chief Metropolitan Magistrate, 24th Court, Borivali, Mumbai on 16th July 2014 in C.C. No.2145/SS/2014, which is confirmed by the Additional Sessions Judge, (Borivali Division), Goregaon, Mumbai, vide his Judgment and Order dated 15th June 2015 in Criminal Appeal No.107 of 2014. By the impugned order, the learned Magistrate has directed the Petitioner to pay amount of Rs.10,000/- per month as interim maintenance to Respondent No.1 and Rs.10,000/- per month for her two children for their educational expenses from the date of the application. Further, the Petitioner was also directed to pay the amount of Rs.12,000/- per month to Respondent No.1 as rent for alternate accommodation from the date of the order till final disposal of the case.

2. Submission of learned counsel for the Petitioner is that, there is no domestic relationship between the Petitioner and Respondent No.1 and in such situation, the impugned order passed by the Trial Court and confirmed by the Appellate Court cannot survive. To substantiate his submission, learned counsel for the Petitioner has relied upon the definition of the 'Domestic Relationship", as given in Section 2(f) of Protection of Women from Domestic Violence Act, 2005.

3. The second submission raised by learned counsel for the Petitioner is that, Respondent No.1 herself is earning income as she is doing the business of beauty parlor. Further it is submitted that, the income of the Petitioner, as considered by the Trial Court and the Appellate Court, is on higher side. Petitioner is working in a saree shop as Commission Agent and, therefore, he is not able to pay the amount of interim maintenance and rent, as ordered by the Trial Court.

4. Respondent No.1 is present in person and submits that the Petitioner is her husband and she had two children out of the wed-lock. Further she submits that the Petitioner is having his own shop and his own business. She further submits that the amount of the maintenance and rent, as awarded by the Trial Court, is just sufficient, considering their standard and status of living.

5. As regards the first submission advanced by learned counsel for the Petitioner as to there being no domestic relationship between the parties, the Trial Court and the Appellate Court have found that Respondent No.1 has produced on record the Birth Certificates of her two sons, in which the

name of the Petitioner is appearing as their father. She has also produced photographs on record, which established the relationship between the Petitioner and Respondent No.1. In such situation, the relationship between the Petitioner and Respondent No.1 squarely falls within the definition of “Domestic Relationship”, as given in Section 2(f) of the Protection of Women from Domestic Violence Act. Therefore, this contention, at this interim stage, cannot be available to the Petitioner.

6. As regards the quantum of maintenance and rent also, it is pertinent to note that this order is all the way of an interim nature. When on the basis of the documents produced before the Trial Court, the Trial Court has, after considering all the facts and the documents before it, fixed the quantum of maintenance and rent, which is also confirmed by the Appellate Court, in this writ jurisdiction this Court is reluctant to enter into the issue of quantum of maintenance. Ultimately, at the time of final hearing, which is already expedited by the Appellate Court, the Petitioner is at liberty to raise all the contentions and also produce the rebuttal evidence to substantiate his contentions.

7. Therefore, this Petition holds no merit and hence stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]