

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 630 OF 2016

Ibrahim Ismail Shaikh

.....Petitioner

V/s.

Saima Shahazad Shaikh and Ors

....Respondents

WITH
CRIMINAL WRIT PETITION NO. 795 OF 2014

Ibrahim Ismail Shaikh

.....Petitioner

V/s.

Saima Shahazad Shaikh and Ors

....Respondents

Ibrahim Ismail Shaikh party in person
Mr. Sagar R. Agarkar for Respondent No. 1
Mr. Sangram Lotankar for Respondent nos. 3 & 4.
Mr. A. R. Patil APP for the State.

CORAM : RAVINDRA V. GHUGE, J.
DATED : JULY 12, 2016.

PC :

- 1) Both these petitions have been filed by the original Respondent nos. 1 & 2 in Misc. Application No. 114 of 2013.
- 2) The Petitioners are aggrieved by the order dated 20/08/2013 delivered

by the learned Magistrate. The Petitioners are also aggrieved by the Judgment of the Appeal Court dated 13/01/2014 by which Criminal Appeal No. 424 of 2013 filed by the original Respondents has been dismissed.

3) I have heard Ibrahim Ismail Shaikh, Petitioner in person and the learned Advocates at length. The contention is that because the original complainant has filed an application for interim relief under the provisions of Protection of Women from Domestic Violence, Act 2005 and the said application has been supported with an affidavit, the petitioner desired to lead oral evidence before the learned Magistrate prior to deciding the application for interim relief. As a consequence, these Petitioners had preferred an Application Exhibit 37 before the learned Magistrate seeking liberty to lead oral evidence and cross-examine the original complainant. It was prayed that the hearing of the interim Application should be deferred so as to enable the parties to lead oral evidence.

4) Since the Application Exhibit 37 was rejected, the Petitioners preferred an appeal under section 29 of the Act before the learned District and Sessions Judge. By the impugned order dated 13/01/2014, Criminal Appeal has been dismissed.

5) The Petitioners have placed reliance upon the Judgment of this Court in the matter of **Ramesh Laxman Contractor V/s Mrs. Jayshreeben Ramesh Contractor and another** [1982 Cr.L.J. 1460], the Judgment of the Hon'ble Supreme Court in the matter of **Chaturbhuj V/s Sita Bai** [A.I.R. 2008 Supreme Court 530] and the Judgment of the Allahabad High Court in the matter of **Jagdish Prasad V/s. IVth Addl. Sessions Judge, Varanasi and Ors** [I (1996) 496].

6) The grievance of the Petitioners is two fold. Firstly that since the Petitioners have appeared as Respondents in the proceedings before the learned Magistrate, there ought not to be an *Ex-Parte* order on the interim application filed by the original complainant. Secondly, since the original complainant has supported the application for interim relief with an affidavit, the Respondents desired to cross-examine the original complainant prior to the hearing on the application for interim relief.

7) The learned Advocate for the Respondent strenuously defends the impugned orders.

8) The learned Advocate for the Petitioner and the Petitioner party in person have referred to paragraph no. 5 of the Judgment in **Ramesh Laxman**

Contractor V/s Mrs. Jayshreeben Ramesh Contractor and another [*Cited Supra*] and state that if a litigating side is willfully neglecting to attend the court, Section 126(2) itself provides that all the evidence shall be recorded in the manner prescribed for summons case.

9) I do not find that the ratio is applicable to the facts of this case and the stage at which the case is today.

10) They have further relied upon the observation of the Hon'ble Supreme Court in paragraph nos. 6 & 7 in the Judgment of **Chaturbhuj V/s Sita Bai** [A.I.R. 2008 Supreme Court 530] [*Cited Supra*] that the burden is placed in the first place upon the wife to show that the means of her husband are sufficient and it is an inseparable condition that the wife has to satisfy the Court that she is unable to maintain herself.

11) In my view, this ratio also does not apply to this case at the stage at which it is today.

12) It is a matter of procedure that in the Trial Courts, an application for interim relief is supported with an affidavit. That does not mean that the affidavit is filed by way of examination-in-chief. In such situations, the Respondents are at liberty to file their written statement to the main

proceedings as well as to the application for interim relief. They are obliged to support the written statement with a verification or an affidavit. This position in Law does not take the case beyond the application for interim relief. An application for interim relief has to be considered by the Court upon hearing the sides after the Respondents have also entered their appearance and on the basis of whatever material is placed before the Court at that stage.

13) In the above backdrop, the request of the Petitioners before the learned Magistrate to commence recording of oral evidence before deciding the application for interim relief, is like putting the cart in front of the horse. The Learned Magistrate as well as the learned District and Sessions Judge has therefore rightly rejected the request of the Petitioners.

14) It is Trite Law that unless the impugned orders appear to be perverse and erroneous and are likely to cause grave injustice to the litigating sides, no interference is called for in the supervisory jurisdiction of this Court.

15) I do not find that the impugned orders could be termed as being perverse and erroneous. Both the petitions are devoid of merits and are therefore dismissed.

16) Since the Respondents have already appeared in the matter, the learned

Magistrate would obviously hear all the sides and consider the material available before passing its interim order.

(RAVINDRA V. GHUGE, J.)