

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

` WRIT PETITION NO. 863 OF 2015

Shri. Sandip Hindurao Patil.

..Petitioner.

vs.

Mrs. Ashwini Sandip Patil and ors.

..Respondents.

Mr. Dilip Shinde i/by Smt.S.S.Yadav for the Petitioner.

Mr. Sugandh Deshmukh for Respondent No.1.

Smt. R.V. Newton, APP. for the State.

CORAM : A.S.GADKARI, J.

DATE : 11th April,2016

P.C.

By the present petition filed under Section 226 of the Constitution of India, the petitioner has challenged the Judgment and order dated 27.5.2014 passed in Criminal Misc. Application No.426/2012 by J.M.F.C. Court No.5, Kolhapur thereby partly allowing the application filed by the respondent No.1 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for brevity "Said Act") and the Judgment and order dated 23.12.2014 passed in Criminal Appeal No.108 of 2014 by the Ad-hoc Additional Sessions Judge-1, Kolhapur dismissing the appeal preferred by the petitioner and confirmed the Judgment and order dated 27.5.2014 passed by the Trial Court.

2) The petitioner is the husband of respondent No.1. The marriage of petitioner with respondent No.1 was solemnized on 10.5.2005 at Village Turambe, Taluka Radhanagari as per the Hindu Vedic rites. It appears from the record that due to matrimonial discord and domestic violence caused by the petitioner to the

Respondent No.1, the respondent No.1 filed an application under Section 12 of the said Act thereby praying for various reliefs as has been specifically mentioned in the said application on 11.6.2012 being Criminal Misc. Application No.426 of 2013 and claimed Rs.15,000/- per month as the monthly maintenance with other reliefs from the petitioner herein. The petitioner appeared in the said proceeding and filed his detailed reply dated 13.8.2012 and denied the contentions raised by respondent No.1. The learned Trial Court by its Judgment and order dated 27.5.2014 partly allowed the said application and directed the petitioner to pay Rs.3000/- per month for the Respondent No.1 towards the maintenance as monitory relief from the date of filing of the said application. The petitioner was also directed to provide to the Respondent No.1, suitable portion of the residence in Flat No.505, Gangakunj Housing Society at Pune for her residence together with all necessary amenities to make such residential premises properly habitable for the Respondent No.1. The petitioner was also restrained from dispossessing or in any manner disturbing the possession of respondent No.1. In the alternative, the petitioner was directed to pay Rs.2000/-p.m. to respondent No.1 for obtaining alternative accommodation in the event the petitioner is reluctant to live in the said house from the date of passing of the said order.

The Criminal Appeal No. 108/2014 preferred by the petitioner has been turned down by the Ad-hoc Additional Sessions Judge-1, Kolhapur by Judgment and order dated 23.12.2014. The petitioner has preferred the present petition against the concurrent findings recorded by both the Courts below.

3) Heard the learned counsel for the petitioner and the respondent No.1 and with their assistance I have perused the entire record annexed herewith.

4) The learned counsel appearing for the petitioner submitted that the complaint filed by respondent No.1 is not maintainable as it was filed after substantial delay. He further submitted that there is no evidence on record to substantiate the claim of respondent No.1. He submitted that the respondent No.1 has failed to make out any case of domestic violence in the Application and therefore, the Application filed under Section 12 of the said Act itself is not maintainable. The petitioner does not have sufficient means to pay the monthly maintenance to respondent No.1. He further submitted that the learned Trial Court in Para 44 of the impugned order has erred in holding that the loan account is Nil as on 10.10.2013. He submitted that as a matter of fact the said loan account is still in operation and the petitioner is paying the monthly instalment of Rs.14,000/- per month. He also produced for my perusal the extract of loan account of the year 2014 and thereafter. He submitted that the petitioner has left the service in the year 2009 as of today he is jobless. He further submitted that in the circumstances the impugned order passed by the Trial Court and upheld by the Appellate Court is bad in law in facts and deserves to be quashed and set aside.

5) The learned counsel appearing for respondent No.1 vehemently opposed the petition and submitted that there is concurrent findings recorded by both the courts below. The Trial Court has categorically held that the applicant is having substantial

means to pay the monthly maintenance to respondent No.1. He further submitted that the extracts of the loan account of the petitioner clearly shows that the petitioner before the court is having capacity to pay the monthly instalment of Rs.14,000/- even on this date. He lastly submitted that the present petition is filed only to harass respondent No.1 and the same may be dismissed with costs.

6) I have perused the entire record. The learned Trial Court after assessing the entire evidence on record has held that the petitioner is having landed property and is earning income from the same. It has been further held that the petitioner is depositing the instalment of Rs.14,000/- per month in the loan account. It is to be noted here that the extracts of loan account produced before this Court today by the learned counsel for the petitioner also demonstrates that the petitioner is having capacity to pay the loan instalment of Rs.14,000/-. The petitioner has contended that he has left the service in the year 2009 itself however, he has not produced on record any document to support his contention. As far as contention of the petitioner that there is delay in lodging the complaint under the said Act however, a plain reading of the complaint demonstrate that respondent No.1 was subjected to domestic violence as contemplated under the provisions of the said Act. It appears that there was no delay in approaching the Trial Court by respondent No.1 and the said application under Section-12 has been within reasonable period.

Be that as it may, according to me, the amount which has been awarded by the Trial Court as monthly maintenance to respondent No.1 at the rate of Rs.3000/- is just, proper and reasonable amount and needs no interference with it. A minute perusal of both the Judgments and orders passed by the two Courts below would reveal that both the Courts below have not committed any error of law or in facts while passing the impugned Judgments and orders. As stated earlier, the monthly compensation awarded in favour of respondent No.1 of Rs.3000/-per month is according to me is just, right and proper amount and needs no interference at the hands of this court. Apart from the facts mentioned herein above, the present petition is filed against the concurrent findings recorded by the Trial Court and the Appellate Court. The contention of the learned counsel for the petitioner that the complaint/Application under Section 12 of the said Act itself is not maintainable as there was no domestic violence at all cannot be accepted for the simple reason that a plain reading of the complainant filed by the Respondent No.1 would demonstrate that she was subjected to domestic violence and the said facts are specifically narrated in the said complaint. Hence, according to me, there is no merit in the petition. Petition is dismissed accordingly.

7) By an order dated 17.4.2015 this Court has directed the petitioner to deposit a sum of Rs.10,000/- towards the costs of the litigation in the registry of this Court. The learned counsel appearing for the petitioner submitted that the petitioner has already deposited the said amount. The respondent No.1 is hereby permitted to withdraw the said amount.

8) All the concerned to act on a copy of this order duly authenticated by the registry of this Court.

(A.S. GADKARI, J.)