

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 1146 OF 2015

Mr. Samir Prabhakar Agale

.....Petitioner

V/s.

Sou. Poonam Samir Agale and others

....Respondents

Mr. A. B. Tajane Advocate for Petitioner.

Mr. K. U. Nikam Advocate for Respondent nos. 1 & 2

Ms. V. S. Mhaispurkar APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : JUNE 21, 2016.

PC :

Heard.

- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Petitioner herein happens to be Respondent in C.C. No. 2972 of 2012 pending before Judicial Magistrate First Class at Pune. Complainant i.e. Respondent had filed application under the provisions of Protection of Women from Domestic Violence Act (Hereinafter referred as "The said act"). Learned Magistrate by an order dated 25/04/2013 passed an order thereby issuing process against the Respondents. On the same day, learned Magistrate had passed an order that Respondent i.e. present Petitioner shall pay an

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amount of Rs. 4,500/- per month to the complainant/respondent towards rent of the flat hired by her.

4) Being aggrieved by the said order, Petitioner had filed Criminal Appeal No. 294 of 2013. Learned Appellate Court was swayed by the submissions that process was issued against the appellant without following due procedure of Law under the Code of Criminal Procedure or Code of Civil Procedure. Notice was sent to the Protection Officer and the report did not bear the signature or seal of the office of the Protection Officer and therefore according to the Appellate Court, summons were not duly served in accordance with Law and hence, the impugned order dated 25/04/2013 was quashed and set aside by an order dated 27/09/2013. The trial Court was directed to give hearing to the parties and pass fresh orders. Hence, first application was restored to its original status.

5) Learned counsel for the Petitioner submits that the said application is still under consideration by the learned Magistrate. Second application was filed by the Respondent wherein she had prayed for an interim maintenance of Rs. 20,000/- during the pendency of the said proceedings. Being aggrieved by the said order, Petitioner herein had again filed Criminal Appeal No. 339

of 2014. Appeal was dismissed vide Judgment and Order dated 20/02/2015. An order of attachment of salary was passed by learned Judicial Magistrate First Class on 16/04/2015. Petitioner has approached this Court in the interregnum i.e. on 13/03/2015 and vide order dated 18/04/2015, the impugned order was stayed by this Court (Coram : M. L. Tahaliyani, J.). It is a matter of record that it was an *Ex-parte* order and Respondent was not heard on that day. Matter was adjourned from time to time and the interim relief was extended. By an order dated 07/06/2016, this Court had directed the Petitioner to deposit an amount of Rs. 25,000/- in the account operated by the Respondent wife. Learned counsel for the Petitioner submits that the said order has been complied with. Learned counsel for the Respondent admits that till today, Respondent received an amount of Rs. 1,20,000/-, however, there are arrears of about 3,00,000/- as on today.

6) Perused the papers. It appears that Petitioner herein is working as Assistant Lecturer in Abhinav Kala Vidyalaya at Pune. The records indicate that Petitioner was drawing salary of Rs. 37,715/- per month as on 27/05/2014 and after deducting amount of EMI to the tune of Rs. 10,000/-, he was receiving Rs. 26,761/- per month. It was in these circumstances that learned

Magistrate had rightly granted maintenance to the tune of Rs. 7,000/- per months for the Respondent and her son who is aged 5 years old and is studying in SSPMS i.e. Shri. Shivaji Pre-Military School at Pune.

7) Taking into consideration the facts of the case, it cannot be said that Sub-ordinate Courts have granted an unwarranted order. The maintenance is rightly granted in favour of the Respondent and it is directed that the Petitioner shall deposit interim maintenance at the rate of Rs. 7,000/- per month. Today, in the course of hearing of the present petition, learned counsel for the Petitioner, upon instructions from the Petitioner who is present in the Court submits that Respondent is earning sufficiently. It was initially contended that she runs fitness/wellness consultancy, however, the said contention was denied by the Respondent who is present in the Court. It is thereafter, contended that Respondent runs a beauty parlour and has her own source of income. Irrespective of the fact that Respondent is running a beauty parlour, she deserves maintenance as she has to maintain her growing son whose annual fees are to the tune of Rs. 22,000/-. The income from running the beauty parlour may not be stable income which would be sufficient for her survival.

8) In view of the above discussion, petition deserves to be dismissed.

Hence, following order.

(i) Writ petition is dismissed.

(ii) Petitioner is directed to deposit the amount of maintenance at the rate of Rs. 7,000/- per month till 20/02/2015 and from 20/02/2015 Petitioner shall deposit the amount of maintenance at the rate of Rs. 6,000/- per month.

(iii) Petitioner shall clear the arrears within 6 weeks from today.

(iv) Order of attachment of salary passed by learned Judicial Magistrate First Class, Pune vide order dated 16/04/2015 shall take effect forthwith. The same shall be executed within a week from the receipt of this order.

(v) Rule is discharged.

9) Needless to say that interim relief granted vide order dated 18/04/2015 stands vacated.

10) Office to communicate this order to the concerned court, forthwith.

11) Writ petition stands disposed of.

(SMT. SADHANA S. JADHAV, J.)