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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1387 OF 2014

Shrikant Narayanrao Matte

..Petitioner

Vs.

Sou Archana Shrikant Matte & Anr.

..Respondents

Ms. Bhagyashree Alate a/w Jaymala Ostwal i/b JJ Associates for Petitioner.

Ms. Vrushali Maindad i/b A.A. Desai for Respondent No.1.

Ms. Anamika Malhotra, APP for Respondent No.2-State.

CORAM: A.S. GADKARI, J.

DATE : 6th April 2016.

P.C.

1 By the present petition filed under Article 227 of the Constitution of India, the petitioner-husband has challenged the interlocutory order passed under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (for brevity the said Act) and confirmed by the Appellate Court.

2 The respondent No.1-wife has filed an application bearing Criminal M.A. No.2010 of 2012 under Section 12 of the Protection of Women from Domestic Violence Act for claiming reliefs under Sections 18, 19 and 23 of the said Act. The respondent No.1-wife has also filed an application under Section 23(1) of the said Act below Exhibit-5, claiming interim maintenance.

The respondent No.1-wife in her complaint has mentioned various instances of domestic violence and need of getting interim maintenance from the petitioner-husband. The learned Judicial Magistrate First Class, Court No.7, Pune by its order dated 11.10.2013, passed below Exhibit-5, partly allowed the said application and granted Rs.12,500/-p.m. as interim maintenance to the respondent No.1 herein for the care and protection of their daughter from the date of filing of the application till final decision of the main application. The Criminal Appeal bearing No.566 of 2013 preferred by the petitioner, under Section 29 of the said Act, has been dismissed by the District Judge-9 and Additional Sessions Judge, Pune, by its Judgment and Order dated 7.3.2014.

3 The learned Counsel for the petitioner submitted that, the respondent No.1 has already filed various proceedings under different statutes against the petitioner husband and she is already getting maintenance under the orders passed by the concerned Court. The learned Counsel further submitted that the respondent No.1-wife was not having any need of money and only with a view to harass the petitioner has filed the application under Section 12 of the said Act and the same is sheer abuse of process of law. That the complaint/Application does not make out any case of domestic violence under the said Act and the same is not maintainable. She further submitted that the amount of monthly maintenance which is being paid is being misused by the

respondent No.1 for filing frivolous litigation against the petitioner. She submitted that as there are various orders which are in favour of the respondent No.1 granting maintenance to her, the maintenance granted to the respondent No.1 by the impugned order for welfare of the child is bad in law. The learned Counsel therefore prayed that the present petition be allowed and the impugned order be set aside.

4 The learned Counsel for the respondent No.1 vehemently opposed the present petition and submitted that the respondent No.1 has adopted the remedies available to her in law and is not misusing the process of law. She further submitted that the present petition filed by the petitioner is to harass the respondent No.1 and the same may be dismissed with costs.

5 At the outset it is to be noted here that, Section 36 of the Protection of Women From Domestic Violence Act, 2005 makes it explicitly clear that, the provisions of the said Act are in addition to and not in derogation of provisions of any other law, for the time being in force. In view of the clear mandate of the said act, the arguments advanced by the learned Counsel for the petitioner that the respondent No.1 has already been granted maintenance by the different Courts under different statutes cannot be accepted and is required to be rejected at its threshold.

6 As far as the contention with respect to the maintainability of the Application under Section 12 of the said Act is concerned, a bare perusal of the complaint/Application discloses that there are specific allegations of domestic violence which are caused at the instance of the petitioner to the respondent No.1 and hence it is prima facie maintainable. As the main application under Section 12 of the said Act is pending for final adjudication before the competent Court, it will not be appropriate to make further comments on the rival contentions of the respective parties at this stage.

7 The present petition is arising out of the interlocutory order passed under Section 23 of the said Act and there is concurrent finding recorded by the two Courts below and as stated earlier. After minutely perusing both the orders, I find that there is no error of law or in facts at all and according to me the interim maintenance granted in favour of the minor daughter is just and proper. Both the Courts after taking into consideration the monthly earning of the petitioner, have come to the conclusion that the amount of Rs.12,500/- is to be paid to the minor daughter by the petitioner. It is to be noted here that the Trial Court has not granted any maintenance amount to the respondent No.1 herein. It is surprising that the petitioner has filed the present petition against the grant of interim maintenance for his own minor daughter on the aforesaid grounds.

8 In view of the above, I see no merits in the present petition and the same is accordingly dismissed.

(A.S. GADKARI,J.)