

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 691 OF 2016

Mr. Nasir Ali Rehmat Ali Shaik

... Applicant.

V/s.

State of Maharashtra & Anr.

... Respondents.

...

Mr. D. H. Shukla for the Applicant.

Mrs. M. R. Tidke, APP for the State.

Mr. Pramod Kathane for Respondent.

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CORAM : A. S. GADKARI, J.

DATE : 13th JULY, 2016

P.C.

1. By the present application under Section 482 of Cr. P. C., the applicant has questioned the correctness of order dated 17th June 2016, passed by the learned Additional Sessions Judge, Greater Mumbai, in Criminal Appeal No. 127 of 2016. By the said order dated 17th June 2016, the learned Additional Sessions Judge has simply issued notice to the respondents therein.

2. The record reveals that the Applicant is the Respondent No.1 in Case No. 252/DV/2015 filed by the Respondent No. 2 in the Court of the Metropolitan Magistrate, 67th Court, Borivali, Mumbai, under Section 12 of the Protection of Women from Domestic Violence Act, 2005. The Respondent No. 2 by the said application

has prayed for various reliefs as contemplated under Section 17, 18, 19, 20 and 23 of the said Act. That the learned Magistrate by its order dated 17th May 2016 passed under Section 23 (1) of the said Act, was pleased to grant interim relief in favour of the Respondent No. 2 thereby directing the Applicant to pay Rs. 8000/- per month to the Respondent No. 2 from the date of the said application.

The record further reveals that feeling aggrieved by the said order dated 17th May 2016 passed by the learned Metropolitan Magistrate, the Applicant has preferred Criminal Appeal No. 127 of 2016, in the Court of Sessions at Dindoshi, Mumbai. That the learned Judge of the Appellate Court has passed the order dated 17th June 2016 as stated above which is impugned herein.

3. The learned counsel appearing for the Applicant submitted that alongwith the appeal memo of Criminal Appeal No. 127 of 2016, the Applicant had also moved a separate application for stay affirmed on 16th June 2016. He submitted that the registry of the Appellate Court did not accept the said application moved by the Applicant for stay. He submitted that the Applicant has also made a prayer in the appeal memo itself for interim relief i.e. seeking stay to the order dated 17th May 2016, seeking interim relief in terms of prayer clause (d) of the appeal memo. However, the Appellate Court did not pass any order on the same. He submitted that as the registry of the Appellate Court did not entertain the separate application moved by the Applicant for stay of the impugned order

and also did not pass any order on prayer clause (d) of the appeal memo of Criminal Appeal No. 127 of 2016, he was constrained to file the present application.

4. The present application initially came up for hearing before this Court on 27th June 2016, when this Court had directed the Applicant to deposit 50% of the outstanding amount in the Trial Court within a period of 2 weeks from 27th June 2016 and the present application was adjourned to 12th July 2016. It was further directed by the said order that upon deposit of the said amount by the Applicant in the Trial Court within the stipulated period, there will be ad interim relief in terms of prayer clause (b) of the present application. The learned counsel for the Applicant submitted that his client has complied with the said direction issued by this Court dated 27th June 2016 and has deposited the said 50% of the outstanding amount in the registry of the Trial Court.

5. Prima facie, I see no reason for the registry of the Appellate Court, not to entertain or take on record a separate application for stay moved/filed by the Applicant, if permissible by the rules prescribed therein. As the Applicant has already complied with the order dated 27th June 2016 passed by this Court, the learned Additional Sessions Judge, Greater Mumbai, seized Criminal Appeal No. 127 of 2016, preferred by the Applicant, is hereby directed to accept and register the separate application preferred by

the Applicant for stay of the impugned order dated 17th May 2016 passed by the Trial Court, if permissible by the rules and if as per the rules the said application is not maintainable, then the learned Additional Sessions Judge, Greater Mumbai, is hereby directed to decide the prayer for interim relief as prayed for by the Applicant in the appeal memo as per the provisions of law within a period of 4 weeks from the date of the receipt of the present order. The interim relief granted by the this Court by its order dated 27th June, 2016 shall remain in force for a period of four weeks from today.

6. It is needless to mention that the Respondent No. 2 is at liberty to file an application for withdrawal of the amount deposited by the Applicant in pursuance of the order dated 27th June, 2016, passed by this Court.

7. The application is allowed in the aforesaid terms.

(A. S. GADKARI, J.)