

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.2837 OF 2016

Nazma Nizamuddin Shaikh .Petitioner

Vs.

The State of Maharashtra & ors. .Respondents

Mr.Laxman Venkatesh, Advocate, for the
Petitioner

Mrs.P.P.Shinde, APP, for the Respondent No.1 –
State

Mr.M.S.Kadu, Advocate, for the Respondent Nos.
2 & 3

CORAM : REVATI MOHITE DERE, J.

DATE : 07.10.2016

P.C.

. Heard learned counsel for the
Petitioner and the learned counsel for the
Respondent Nos.2 & 3.

2. By this Petition, the Petitioner seeks
quashing & setting aside of the noting in the
roznama dated 22.06.2016 of the learned
Metropolitan Magistrate, 69th Court, Sewree,
Mumbai.

3. Learned counsel for the Petitioner states that the D.V.Complaint was filed by the Petitioner in the Court of the learned Metropolitan Magistrate, 69th Court, Sewree, Mumbai on 21.06.2013. The said complaint was filed under Section 12(1) of the Protection of Women from Domestic Violence Act. He submitted that the Petitioner had filed an Application seeking certain urgent interim reliefs in October, 2014. He submitted that instead of hearing and passing appropriate orders on the interim Application, the learned Judge directed the Petitioner to file her Affidavit of evidence. He submitted that vide order dated 17.01.2015, the learned Judge directed that an Affidavit of the aggrieved person would be decided alongwith the main Application and adjourned the case for recording of evidence. He submitted that thereafter, on 22.06.2016, the adjournment Application filed by the Petitioner was rejected and the case was directed to be

listed under the caption "For Dismissal Order". Learned counsel for the Petitioner submits that since the learned Magistrate was on leave, the case has not been dismissed. He submitted that the learned Judge ought to have decided the interim Application which was filed by the Petitioner before the hearing of the main complaint. He submitted that the learned Judge instead of granting any interim relief directed that the said Application will be decided alongwith the main Application, thereby defeating the very object and provisions of the Domestic Violence Act.

4. Learned counsel for the Respondent Nos.2 & 3 opposes the Petition. He submits that the interim Application can be decided alongwith the main Application.

5. Perused the papers including the noting in the roznama dated 17.01.2015 and 22.06.2015.

The interim Application was filed by the Petitioner in October, 2014 praying for interim reliefs therein. The learned Judge without deciding the interim Application directed that the said interim Application will be decided with the main Application. The Domestic Violence Act is enacted for the protection of women from domestic violence. In the said Act, there are certain provisions, by which certain interim orders can be passed to protect women subjected to domestic violence e.g. residence orders, protection orders, maintenance orders etc. The very object of the said Act is defeated by keeping the interim Application pending and by not deciding the same.

6. Considering the aforesaid, the learned Metropolitan Magistrate, 69th Court, Sewree, Mumbai, is directed to first decide and consider the interim Application filed by the Petitioner before proceeding with the main Application.

Only after the interim Application is decided, the trial Court to proceed with the main Application. The learned Magistrate to decide the interim Application as expeditiously as possible and in any event, ***within four weeks from today***. Only after the prayer in the interim Application is decided, the learned Judge shall proceed with the main Application.

7. Accordingly, the Petition is disposed of on the aforesaid terms.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)