

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1118 OF 2015

Sandip Mrunmoy Chakrabarty. ... Applicant.
V/s.
Krishna Sandip Chakrabarty
and another. ... Respondents.

Tapan Thatte for the applicant.
Sanjay Bhojwani for respondent No.1.
H.J.Dedhia, APP for the State.

CORAM : C.V. BHADANG, J.

DATED : 11th March 2016.

PC.

Heard the learned counsel for the applicant and the learned counsel appearing for the respondent.

2. By this application, the applicant is challenging the order dated 2nd April 2014, by which the application (Exh.17) filed by the present applicant in Misc. Application No.68/2014 has been dismissed by the learned Judicial Magistrate, First Class, Cantonment Court, Pune.

3. The brief facts are that the applicant and Mrs.Reshita Sandip Chakrabarty (original applicant No.1 before the Magistrate) are husband and wife. The present respondent Krishna Sandip Chakrabarty aged 11 years (original applicant No.2 before the Magistrate) is the son of the

applicant. It appears that Mrs.Reshita Chakrabarty, the wife of the applicant has filed Misc. Application No.68/2014 before the Magistrate under section 12 of the Protection of Women from Domestic Violence Act, 2005 (“the said Act” for short) for various reliefs. In so far as present application is concerned, the material relief is as regards the prayer clauses (vii) to (ix) of the misc. application which pertain to the minor child. In particular, under prayer clause 77(vii), a restraintment order is sought against the present applicant from making any contact with the respondent in any manner whatsoever whether physically, telephonically, electronically or otherwise. By prayer clause 77(viii), a claim of maintenance of Rs.25,000/- per month has been made in respect of the child apart from the claim of Rs.75,000/- per month in respect of wife. By prayer clause 77(ix), a claim of expenses for the schooling and extra curricular activities of the respondent child is made before the learned Magistrate.

4. It appears that the applicant has filed an application at Exh.17 for deletion of the name of the respondent child (original applicant No.2) from the array of the applicants. It was contended that under the provisions of section 2(a) of the said Act which defines an aggrieved person, it is only a woman who could be the aggrieved person. The learned Magistrate by the impugned order rejected the said application. The learned Magistrate found that the aid Act also defines the term “child” vide section 2(b) as below the age of 18 years. The learned Magistrate has further noticed that the Act contemplates grant of various reliefs to such child also. The learned Magistrate has thereafter noticed that

section 2(b) does not differentiate between a male and a female child. In that view of the matter, the application came to be rejected. Feeling aggrieved, the applicant is before this Court.

5. Before setting out the rival submissions it would be necessary to state that by subsequent interim order dated 6th May 2014, the learned Magistrate had granted certain reliefs in favour of the present respondent as also the wife of the applicant. That order was unsuccessfully challenged by the applicant in an appeal before the learned Sessions Judge. Undisputedly, the said order has been challenged before this Court in Criminal Revision Application No.73/2016. It is neither necessary nor appropriate to go into the question of the merits of the said order as it is subjudice in a separate proceeding. The issue in the present case is only limited as to whether the name of the respondent being the original applicant No.2 needs to be deleted.

6. It is submitted by the learned counsel for the applicant that a male child cannot be arrayed as an applicant in the title clause of the application under section 12 of the said Act. It is submitted that section 12 of the said Act envisages filing of an application only by the aggrieved person which could be a woman. The learned counsel did not dispute that in a given case a female child of the parties can be arrayed and made as a co-applicant. Thus, the objection in short is that a child being a male child cannot be made a co-applicant along with the aggrieved woman.

7. The learned counsel appearing for respondent No.1 has supported the impugned order. It is submitted that while defining the term “child”, section 2(b) does not make any distinction between the a male and a female child. It is pointed out that the Act also contemplates grant of certain reliefs in favour of the child also. It is submitted that no prejudice whatsoever is caused to the applicant if the name of the child appears in the title clause of the application as co-applicant.

8. I have considered the rival circumstances and the submissions made. At the outset, it is necessary to mention that there are various sections in the said Act which contemplate grant of certain reliefs in favour of a child. For instance, section 20 of the said Act provides for monetary relief which includes expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence. Section 20(1)(d) specifically provides that the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Cr.P.C. can be sought for. It would be significant to note that section 20(1)(d) mentions “child” which obviously includes a male as well as a female child. Section 18(c) envisages that protection order can be passed in favour of the aggrieved person thereby restraining the respondent from entering the place of employment of the aggrieved person or a child or its school or any other place frequented by the aggrieved person. Significantly enough section 2(b) of the said Act which defines the child provides that a child means any person below the age of 18 years and includes any adopted, step or foster child. Thus, the said

section also does not make any distinction between a male and a female child. The learned counsel appearing for the applicant very fairly did not dispute that under the provisions of the said Act, relief can be claimed and granted in respect of the child including a male child. His only contention is that the child cannot appear as a co-applicant. The learned counsel has further submitted that in a given case the female child can be a co-applicant but not a male child.

9. Having considered these submission, it is difficult to envisage as to how the present applicant would be prejudiced if the name of the respondent as co-applicant appears in the cause title of the application, Once it is not disputed that relief can be claimed and granted in respect of a male child also. I would hasten to add that this court has not considered the merits of the order passed in favour of the aggrieved person and the child. Thus, in my considered view no interference in the impugned order is called for, in exercise of inherent jurisdiction under section 482 of Cr.P.C.

10. In the result, the criminal application is hereby dismissed. All rival contentions of the parties on merits are kept open.

(C.V. BHADANG, J.)