

**IN THE HIGH COURT OF BOMBAY AT GOA****CRIMINAL WRIT PETITION NO. 17 OF 2015**

1. Mr. Gurudas Sanvalo Naik, aged 34 years, son of late Sanvalo Naik, r/o H. No. 418, Malwada, Madkai, Ponda-Goa.
2. Smt. Suranga Sanvalo Naik, aged 58 years, wife of late Sanvalo Naik, r/o H. No. 418, Malwada, Madkai, Ponda-Goa.
3. Mr. Sameer Sanvalo Naik, aged 35 years, son of late Sanvalo Naik, r/o H. No. 418, Malwada, Madkai, Ponda-Goa.
4. Mr. Ashok Govind Naik, aged 60 years, son of late Govind Naik, r/o H. No. 418, Malwada, Madkai, Ponda-Goa. .... Petitioners

Versus

1. Mrs. Saanvi Gurudas Naik, major of age, wife of Mr. Gurudas Naik, r/o H. No. 321, Opposite Govt. High School, Headland Sada, Mormugao-Goa.
2. State, Through Public Prosecutor, High Court of Bombay at Goa, Panaji-Goa. .... Respondents

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Shri Ashwin D. Bhobe, Advocate for the Petitioners.

Shri Ryan Menezes, Advocate for the Respondent No. 1.

**CORAM:- C.V. BHADANG, J.**

**DATE:- 4<sup>th</sup> JULY, 2017.**

**ORAL JUDGMENT:**

This petition can be disposed of on a short count. The respondent no. 1 has filed a complaint, under the provisions of the Protection of Women from Domestic Violence Act, 2005 (Act, for short), against the petitioners, alleging that she has been subjected to domestic violence. The respondent no. 1 is seeking various reliefs including maintenance. The main application filed by the respondent no. 1 is still pending before the learned Judicial Magistrate First Class at Vasco. The learned Magistrate by an order dated 30.09.2014 has granted interim reliefs, by which the petitioner no. 1, is directed to pay a monthly maintenance of Rs.8,000/- to the respondent no. 1 starting from December, 2013. The said order has been confirmed in appeal before the learned Sessions Judge, against which this petition is filed.

2. It is contended by Shri Bhohe, the learned Counsel for the petitioners that there is no *prima facie* finding recorded by the Courts below that the respondent no. 1 has been subjected to acts of domestic violence. It is submitted that in the absence of any such finding, the Magistrate does not have jurisdiction to grant interim reliefs. The learned Counsel for the petitioner pointed out that the learned Magistrate has

observed in para 6 of the order that as regard the allegation of domestic violence, the same cannot be decided at this stage as to whether the respondent no. 1 was subjected to domestic violence by the petitioners. It is submitted that the learned Sessions Judge has not addressed himself on this aspect. The learned Counsel pointed out that the main application before the Magistrate is at an advance stage of hearing in which, respondent no. 1 has closed her evidence and the application is fixed for evidence of the petitioners. It is submitted that the petitioners will examine one or two witnesses and the main application can be directed to be decided expeditiously. The learned Counsel pointed out that as per the order dated 12.02.2015, there is an interim stay operating against the impugned order.

3. Shri Menezes, the learned Counsel for the respondent no. 1, states that the observations as pointed out on behalf of the petitioners are only at the *prima facie* stage and all that the Magistrate has said is that at the stage of consideration of the interim reliefs, no finding can be recorded as to whether, the respondent no. 1 has been subjected to domestic violence or not. He however does not dispute that the main application is at an advance stage of hearing. He submits

that the application may be directed to be decided expeditiously, in a time bound manner.

4. I have carefully considered the circumstances and the submissions made. It is well settled that a finding that the complainant/wife is subjected to domestic violence is a *sine qua non* for the Magistrate, to entertain the application and grant reliefs. Albeit, at the stage of consideration of interim reliefs, the Magistrate will have to examine the rival contentions on *prima facie* basis and come to a *prima facie* conclusion whether, a case of the complainant/wife being subjected to acts of domestic violence is made out or not, which appears to be lacking in this case. In the absence of a *prima facie* finding that the respondent no. 1 has been subjected to acts of domestic violence, the impugned orders cannot be sustained. Furthermore, there is stay operating to the impugned order since 12.02.2015. The main application before the learned Magistrate is at an advance stage of hearing in which, respondent no. 1 has closed her side. In such circumstances, in my considered view, it would be appropriate that the learned Magistrate decides the main application expeditiously, in a time bound manner.

5. In the result the following order is passed:

**ORDER**

- (a) The petition is allowed.
- (b) The impugned orders dated 30.09.2014 and 17.01.2015, are hereby set aside.
- (c) The learned Magistrate shall decide the application as expeditiously as possible and preferably within a period of three months from the receipt of this order.
- (d) Rival contentions of the parties are left open.
- (e) Rule is made absolute in the aforesaid terms.
- (f) Parties to act on the basis of an authenticated copy of this order.

**C. V. BHADANG, J.**

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