

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 84 OF 2017

SMT. SUNITA SANTOSH SURYAWANSHI ... Petitioner
Versus
MR. SANTOSH SURYAWANSHI AND ANR., ... Respondents

Mr. Melwin Assis Viegas, Advocate for the Petitioner.

Mr. Clayton A. Fonseca, Advocate for the Respondent No. 1.

Coram:- C. V. BHADANG, J.

Date:- 23rd June, 2017

ORAL ORDER:

The petitioner had approached the learned Magistrate under the provisions of the Protection of Women from Domestic Violence Act, 2005, (Act, for short), seeking a direction to the respondent no. 1, to allow the petitioner to stay in the shared household. That application, was rejected by the learned Magistrate.

2. The petitioner challenged the said order before the learned Assistant Sessions Judge in Criminal Appeal No. 175/2010. The learned Assistant Sessions Judge by a judgment and order dated 22.09.2011, allowed the appeal in the following terms:-

"The appeal stands allowed. Consequently, the judgment dated 13.10.2010 passed by Ld. Judicial Magistrate First Class at Mapusa is quashed and set aside. Consequently, the application stands partly granted. The respondent is directed to provide

accommodation to the appellant in the said shared household bearing house no. 302 at Navetim, Pilerne, Bardez within 30 days from today. The respondent is also directed to pay Rs. 1500/- per month as maintenance."

3. Curiously enough, the petitioner again approached the learned Additional Sessions Judge with an application under Section 31 of the Act, for execution of the said order, which was registered as Criminal Miscellaneous Application No. 95/2011. That application, was partly allowed on 02.03.2017 in the following terms:-

"Application at Exh. 42 is partly allowed in terms of prayer clause (b) and (d).

The respondent shall make alternate arrangement within one month and/or make independent and separate provision of room with toilet facility in his own house within one month from today failing which respondent shall be sent to prison."

4. The contention on behalf of the petitioner is that the learned Additional Sessions Judge could not have modified the earlier order, by which the respondent no. 1 was directed to allow the petitioner to stay in the shared household. It is undisputed that the petitioner has filed an application for modification of the order dated 02.03.2017, which is pending before the learned Additional Sessions Judge.

5. It is contended by the learned Counsel for the respondent no. 1 that it was for the learned Magistrate to execute the order passed on 22.09.2011. In other words, it is submitted that the learned Sessions Judge could not have taken upon himself the matter of execution of the order.

6. Faced with this situation, the learned Counsel for the petitioner states that he will not press for the application for modification of the order before the learned Sessions Judge and shall approach the learned Magistrate for execution of the order dated 22.09.2011. He therefore, requests that order dated 02.03.2017 be set aside.

7. The learned Counsel for the respondent no. 1 has no objection for the same.

8. The parties also agree that the respondent no. 1 shall pay/deposit an amount of Rs.6,000/- per month in the account of the petitioner towards alternate accommodation.

9. In the result, the petition is disposed of in the following terms:

(a) The petition is allowed.

(b) The impugned order is hereby set aside.

(c) It will be open to the petitioner to seek execution of the order dated 22.09.2011, before the learned Magistrate.

(d) If, such an application is filed, the Magistrate shall decide the same as expeditiously as possible.

(e) Respondent no. 1 shall pay/deposit an amount of Rs.6,000/- per month in the account of the petitioner towards alternate accommodation.

C. V. BHADANG, J.

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