

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 124 OF 2017

MR. UMESH S. LOTLIKAR., ... Petitioner

Versus

SMT. URMILA S. LOTLIKAR AND ANR., ... Respondents

Ms. S. Bhobe, Advocate for the petitioner.

Mr. Ryan Menezes, Advocate for the respondent no.1.

Coram:- C. V. BHADANG, J.

Date:- 12th September 2017

P.C.

The challenge in this petition under Article 227 of the Constitution of India is to the order dated 27/01/2016, by which the learned Magistrate has granted interim maintenance of Rs.6,000/- per month to the first respondent. The said order has been confirmed by the learned Sessions Judge vide judgment and order dated 03/06/2017 in Criminal Revision Application No.15/2016.

2. I have heard Ms. Bhobe, the learned Counsel for the petitioner and Shri Menezes, the learned Counsel for the first respondent. Perused record.

3. It is contended by Ms. Bhobe, the learned Counsel for the petitioner that the petitioner has never neglected and/or refused to maintain the first respondent and it is the first respondent, who has voluntarily left the matrimonial home. It is contended that

the first respondent is staying with her son, who is earning. It is further contended that the first respondent is also earning by doing the work of selling some eatables and as such, she is able to maintain herself. It is contended that the petitioner is aged more than 60 years and he is unable to provide separate maintenance to the first respondent. It is submitted that the petitioner is seeking maintenance against his son, who is staying separately.

4. Shri Menezes, the learned Counsel for the first respondent has supported the impugned order. It is submitted that the learned Magistrate has only granted interim maintenance and the main application, filed under Section 125 of the Code of Criminal Procedure (Code, for short), is still pending before the learned Magistrate and no case for interference is made out.

5. I have carefully considered the circumstances and the submissions made.

6. The relationship between the parties is not in dispute. The marriage between the petitioner and the first respondent was solemnised on 02/07/1981 and according to the first respondent, she was ill-treated and she along with her children, was forced to leave the house on 24/11/2010 and since then, she is staying separately in rented premises at Cumborda, Verna, Salcete, Goa. According to the first respondent, the petitioner is an Electrical Contractor Class I and owns a Proprietary Firm by name M/s. Lotlikar Electricals at Panaji, Goa. The petitioner is undertaking

private contracts and contracts for PWD such as internal wiring, underground cabling, illumination of roads, etc. and all kinds of electrical contracts. The son of the parties is also an Electrical Engineer and used to assist the petitioner in his work. The learned Magistrate, after considering the case of the first respondent and the defence raised, has found that the petitioner had not shown that he made any efforts to resume cohabitation or of having made any payment towards maintenance to the first respondent. Thus, the learned Magistrate has prima facie found that there is negligence and refusal on the part of the petitioner to maintain the first respondent. This finding has been confirmed by the learned Sessions Judge in Criminal Revision Application No.15/2016. It is well settled that the petitioner being the husband of the first respondent, has a legal and moral obligation to maintain his wife, if she is not having sufficient means to maintain herself. The sole object of Section 125 of the Code is to prevent destitution. All that the learned Magistrate has done, is to grant interim maintenance, that too at the rate of Rs.6,000/- per month. The question whether the petitioner has deserted the first respondent on account of which, the first respondent is forced to reside separately or whether the first respondent has left the matrimonial home of her own accord, is a matter, which will have to be gone into at the hearing of the main application, when the parties have the benefit of leading oral evidence. There are certain documents produced before the Magistrate, showing that

the petitioner has undertaken the work of execution of electrical contracts. Prima facie, it is not shown that the first respondent is earning on account of sale of some eatables. In any case, it has to be shown that any such earnings are sufficient for the first respondent to maintain the same standard of life as that of the petitioner. The quantum of maintenance granted cannot be said to be exorbitant by any standard. Normally, this Court would be slow in interfering with interim order of the present nature. I have carefully gone through the order passed by the learned Magistrate and the judgment of the learned Sessions Judge and I do not find that they suffer from any infirmity, so as to require interference in the exercise of supervisory jurisdiction under Article 227 of the Constitution of India. The petition is without any merit and is, accordingly, dismissed.

7. The amount of Rs.1 Lakh deposited before this Court shall be paid to the first respondent along with interest, if any. The said amount shall be adjusted towards the arrears of maintenance.

C. V. BHADANG, J.

SMA