

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.542 OF 2015

Amritpal Singh ... Petitioner
Vs.
Tript Amritpal Singh and another ... Respondents

Mr. Harshal Suryawanshi for Petitioner.
Mr. A. H. Nagi for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : APRIL 27, 2017

P.C. :

Heard Mr. Suryawanshi, learned Counsel for petitioner and Mr. Nagi, learned Counsel for respondent No.1.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the orders dated- (a) 11.07.2013, (b) 14.02.2014 below exhibit-4 and (c) 20.03.2014 below exhibit-8 passed by the learned 3rd Judicial Magistrate First Class, Vashi. By order dated 11.07.2013, the learned Magistrate issued notice to the petitioner herein in application No.110 of 2013 filed by the respondent No.1 under Sections 12, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 (for short 'D.V. Act'). By order dated 14.02.2014, below exhibit-4, the learned Magistrate allowed the application made by the respondent No.1 wife under Section 23 of the D.V. Act and directed the petitioner to pay maintenance of Rs.30,000/- per month to the respondent No.1 from the date of filing of the application i.e. 11.07.2013. Petitioner is also directed to provide residence to the respondent No.1 and on his failure to do so, he is directed to pay rent of Rs.10,000/- per month from the date of the order. Petitioner is also prohibited from committing any act of domestic

violence. By order dated 20.03.2014, below exhibit-8, the learned Magistrate allowed the application exhibit-8 made by the respondent No.1 for passing orders under Section 20(6) of the D.V. Act and attached the salary of the petitioner.

3. In support of this Petition, Mr. Suryawanshi submitted that the marriage between the petitioner and the first respondent was solemnized in Kolkata on 04.07.2002. Petitioner and the first respondent shifted to their matrimonial home at Faridabad in Haryana. Respondent No.1 left her matrimonial home on 15.01.2012. On 06.03.2012, respondent No.1 went to her father's place in Kolkata. Respondent No.1 came to Mumbai along with her sister and are staying in Navi Mumbai. Respondent No.1 instituted complaint under the D.V. Act on 11.07.2013 in the Court of Judicial Magistrate First Class, 3rd Court, Belapur, Navi Mumbai. He submitted that petitioner engaged Advocate in the matter. However, he did not appear in the matter after filing appearance. He submitted that basically the Court of Judicial Magistrate First Class at Belapur, Navi Mumbai has no jurisdiction to entertain and try the complaint as no cause of action accrued within the jurisdiction of that Court. He, therefore, submitted that the learned Magistrate was not justified in passing the impugned orders and the orders are without any authority of law.

4. On the other hand, Mr. Nagi supported the impugned orders. He submitted that petitioner was duly served and he engaged Advocate. Though the petitioner was served, he did not participate in the proceedings. Petitioner works as a Chief Officer and gets salary of 6013 US Dollars. After considering the earning capacity of the petitioner, the learned Magistrate awarded maintenance of Rs.30,000/- per month and residence order and on failure to provide residence, directed petitioner to

pay rent of Rs.10,000/- per month from the date of the order. Till date, petitioner has neither paid any amount towards maintenance nor towards residence. He, therefore, submitted that no case is made out for interfering with the impugned orders.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute, and even before this Court it was not disputed that petitioner was duly served in the proceedings filed by the respondent No.1 under the D.V. Act. He also engaged the Advocate who however did not participate in the proceedings before the learned Magistrate. After considering the capacity and income of the petitioner, the learned Magistrate passed order on 14.02.2014 directing the petitioner to pay maintenance of Rs.30,000/- per month from the date of filing of the application and also provide residence and on his failure to do so, petitioner was directed to pay rent of Rs.10,000/- from the date of the order.

6. Mr. Suryawanshi submitted that the impugned orders were stayed by this Court. It is not possible to accept this submission. A perusal of the order dated 25.02.2015 passed by this Court (Coram : M. L. Tahaliyani, J.) shows that notice was issued to the first respondent, returnable on 11.03.2015. In the meantime, proceedings before the trial Court were stayed. The said order continued from time to time. In other words, the impugned orders dated 14.02.2014 below exhibit-4 and 20.03.2014 below exhibit-8 were not stayed by this Court. Despite this, petitioner has not complied any of the orders.

7. In view thereof as also for the reasons recorded in the orders dated 14.02.2014 and 20.03.2014, no case is made out for invocation of

powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

8. Liberty is reserved to the petitioner to file application for modification of the orders dated 14.02.2014 below exhibit-4 and 20.03.2014 below exhibit-8 subject to compliance of these orders. It is clarified that unless and until petitioner complies both the orders by making payment, learned Magistrate will not entertain the application for modification. All the contentions of the parties, including the contention of the petitioner that the Court of Judicial Magistrate First Class at Belapur, Navi Mumbai has no jurisdiction to entertain and try the complaint, are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)

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