

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.1723 O 2017

Laxmi Siddaram Reddy

.. Petitioner

Vs.

The State of Maharashtra & Anr.

.. Respondents

.....
Mr.Vikrant V. Phatale, Advocate for the Petitioner.

Mr.N.B. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 22, 2017.

P.C. :

The petitioner has challenged the order dated 23rd February, 2017, passed by the Sessions Judge, Solapur in appeal preferred by respondent no.2. Petitioner has initiated proceedings under Domestic Violence Act which are pending before the Court of the learned J.M.F.C., Solapur. In the said proceedings the petitioner has made prayer for maintenance as well as custody of the children who are aged about 3 years and 5 years. The custody of the children was given to the petitioner vide order dated 12th May, 2016. The petitioner has preferred interim application seeking maintenance which was decided by order dated 12th May, 2016 and respondent no.2 was directed to pay an

amount of Rs.5000/- per month to the petitioner and the children.

2 Respondent no.2 challenged the said order before the Sessions Court by preferring Appeal. The Sessions Court by order dated 23rd February, 2017 directed respondent no.2 to pay a sum of Rs.3000/- per month to the petitioner towards interim maintenance from 1st March, 2017, till final decision of the main application. The petitioner was also directed to hand over the custody of children to respondent no.1. However, respondent no.1 was directed to allow the petitioner to visit her children by suitable arrangement and mutual understanding.

3 The Sessions Court while passing the said order had observed that the petitioner had left the matrimonial house and started residing with her mother. It is further observed that the the petitioner had left the house of her mother for three days leaving the children behind with her mother and a missing complaint was lodged by the mother. The police recorded the statement of mother, the petitioner and her friend. In the said statement it was recorded that the petitioner is having relationship with another person, whose statement was also recorded. In the aforesaid circumstances, the Sessions Court was pleased to direct that the custody of the children be handed over

to the respondent. It is further observed that since the custody of the children was being handed over to respondent no.1, the maintenance amount to the tune of Rs.5,000/- is reduced to Rs.3,000/- which was to be paid to the petitioner. Learned counsel for respondent no.2 submits that the custody of the children is with respondent no.1 since February 2017. The children are studying in school and the expenditure towards the fees of the children is being incurred by respondent no.1. Learned counsel for the petitioner states that the children are of tender age and the custody ought to have been continued with the petitioner. It is submitted that there is no reason for interfering in the order passed by the trial Court. It is also submitted that the expenditure towards the fees of the children were initially incurred by the uncle of the petitioner.

4 I have perused the documents on record. Without adjudicating on the merits of the case, it can be seen that the Sessions Court, Barshi, Solapur has passed the order in peculiar circumstances and the custody of the children is with respondent no.1 since February 2017. The access of the children is also given to the petitioner vide order dated 23rd February, 2017. The order was passed on the interim application preferred by the petitioner.

In complaint under the Domestic Violence Act preferred by the petitioner, the final prayers include the custody of children as the well as maintenance. The order was passed by the trial Court by way of interim arrangement.

5 In the circumstances, I pass the following order:

:: O R D E R ::

- (i) The trial Court is directed to conclude the proceedings under the Domestic Violence Act and deal with the final prayer including the issue of custody of the children within three months from today;

- (ii) In view of the direction given in the above Clause (i), the order passed by the Sessions Court is maintained. However, it is clarified that the trial Court while dealing with the proceedings under the Domestic Violence Act finally shall not be influenced by the orders passed by the Sessions Court, Barshi, Solapur as well as this order;

- (iii) Respondent no.2 is directed to clear the arrears of maintenance as per the orders passed by the Sessions Court, Barshi, Solapur;
- (iv) Writ Petition is disposed of accordingly.

(PRAKASH D. NAIK, J.)