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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2070 OF 2015

Sushant K. Hindalekar

...Petitioner

Vs.

Smt. Chandana Sushant Hindalekar & Anr.

...Respondents

.....

Mr. Sanjiv A. Sawant for the Petitioner.

Mrs. Indrayani M. Koparkar for Respondent No.1.

Mr. N.B. Patil, APP for State.

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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 29, 2017.

P.C. :

The petitioner is challenging the proceedings initiated by respondent No.1 under the Domestic Violence Act, vide C.C.No.315/N/2010. In the said proceedings, the learned Magistrate vide order dated 4th October, 2011 directed the petitioner to pay to Respondent No.1 Rs.5,000/- per month towards maintenance allowance from the date of filing of the said application i.e. 25th May, 2010 till final disposal of the matter. The said order was passed as interim relief of maintenance.

2. The learned Advocate for the Petitioner submitted that the Petitioner had filed the petition for divorce u/s. 13(1)(ia) of the

Hindu Marriage Act, 1955. It is submitted that the petition for divorce was allowed by the Family Court by granting divorce to the petitioner on the ground of cruelty. Written Statement was filed by Respondent No.1 in the said proceedings wherein identical allegations as set out in the complaint filed under the Domestic Violence Act were stated by respondent No.1. It is, therefore, submitted that the proceedings under the Domestic Violence Act was filed with the view to cause harassment to the petitioner. It is observed by the Family Court that the respondent No.1 had examined herself at Exh.44, but she has not entered into witness box. The Family Court passed order of “No Cross” which is upheld by this Court. It is further submitted that the custody of the child is with the petitioner. The Family Court had made observations about the conduct of Respondent No.1 in the decree of divorce. It is, therefore, submitted that in view of the observations of the Family Court with regard to the conduct of Respondent No.1 and the fact that the divorce is granted to the petitioner on the ground of cruelty, the proceedings under the Domestic Violence Act is an abuse of the process of law. It is further submitted that the relationship between the Petitioner and Respondent No.1 has come to an end on account of divorce and, therefore, the proceedings under the Domestic

Violence Act are not maintainable. There is no domestic relationship between the parties for initiating such proceedings. Reliance is placed on the judgment of the Punjab and Haryana High Court in the case of *Amit Agarwal and others vs. Sanjay Agarwal and others (2016 2 Crimes (HC) 783)*. It is further submitted that the Family Court had passed order granting maintenance to the respondent No.1 and hence the trial Court in the present proceedings ought not to have granted maintenance to the complainant.

3. The learned Advocate for Respondent No.1 submitted that the proceedings under the Domestic Violence Act and the proceedings which were initiated before the Family Court are totally different and independent of each other. It is further submitted that the decree of divorce passed by the Family Court has been challenged by Respondent No.1 by preferring Family Court Appeal No. 204/2014 which has been admitted by this Court. It is also submitted that the Court has passed interim order and stayed the decree of divorce till further orders. It is further submitted that the maintenance order which was passed by the learned Magistrate in the application for interim maintenance was not challenged by the petitioner in any other proceedings earlier. It is submitted that the

said order was passed in 2011 and the same has not been complied with by the petitioner. Distress warrant was required to be issued by the trial Court on two occasions. It is submitted that the orders of maintenance passed in two different proceedings cannot be interfered with.

4. I have perused the documents on record. The respondent No.1 filed complaint under Domestic Violence Act against the petitioner and others on 24th May, 2010. The marriage between the parties was solemnized on 15/5/2002. The child was born out of wedlock on 7/5/2003. The petitioner filed divorce petition before Family Court. The learned Magistrate granted interim maintenance of Rs.5,000/- per month to the respondent No.1 vide order dated 4/10/2011. The respondent No.1 had preferred interim maintenance application before Family Court under Section 24 of Hindu Marriage Act. The said application was allowed by order dated 30/1/2012 and interim maintenance of Rs.7500/- per month was directed to be paid by petitioner. The decree of divorce was passed on 20/3/2014. Permanent alimony of Rs.5000/- per month was granted to respondent No.1 from the date of petition i.e. 4/8/2010. The proceedings under the Domestic Violence Act are initiated by

Respondent No.1 which contained allegations of domestic violence at the instance of the petitioner and other Respondents who are not before this Court. It is pertinent to note that the decree of divorce has been challenged by way of an appeal which has been admitted by this Court. By way of interim relief, the decree of divorce is stayed till further order. The Appellate Court has also passed an interim order dated 29th August, 2014 in the aforesaid appeal. In the decision relied upon by the learned Counsel for petitioner the decree was not under challenge before higher Court. It is pertinent to note that the decree of divorce has been stayed by this Court by way of interim order. The proceedings under the Domestic Violence Act and the proceedings before the Family Court are independent of each other. The petition for divorce was preferred by the petitioner. The proceedings under Domestic Violence Act are initiated by Respondent No.1 in which the evidence of Respondent No.1 is already tendered and the matter is due for cross-examination. It is thereafter the petitioner had challenged the proceedings before this Court. The order of interim maintenance was passed by trial Court on 4/10/2011. Thereafter the Family Court has passed interim maintenance order on 30/1/2012 and subsequent order on 20/3/2014. The submission that two Courts have granted

maintenance is devoid of merits. The petitioner has not cleared the arrears of maintenance. The respondent No.1 has filed affidavit of evidence on 4/4/2014 in the present proceedings.

5. In the aforesaid circumstances on the grounds raised by petitioner including the ground that the petitioner has been granted divorce by the Family Court, the proceedings under the Domestic Violence Act cannot be quashed in exercise of the powers u/s. 482 of the Code of Criminal Procedure, or writ jurisdiction under Article 227 of Constitution of India. In view of the above, no interference is required in the impugned proceedings. Hence, I pass the following order.

ORDER

(i) Criminal Writ Petition is dismissed. Interim order, if any, stands vacated.

(ii) It is clarified that the observations made in this order are for considering the present petition and the trial Court should not be influenced by the same during the trial. All contentions of both the parties are kept open.

(PRAKASH D. NAIK, J.)