

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.667 OF 2015**

Rajendra Kute .. Applicant.
Vs.
State of Maharashtra & Ors. .. Respondents.

Mr. Viral Rathod with Mr.H.E. Palwe for the Applicant.
Mrs. Nita Jain APP for the State.
Mr. Tariq Khan for Respondent No.2.

CORAM : A. K. MENON, J.

DATED : 7TH JUNE, 2017

P.C. .

1. By this application, the applicant-husband has called into question the impugned order dated 5th May, 2015 passed by the Additional Sessions Judge, Nasik in Criminal Appeal No.58 of 2013 whereby the Sessions Court had set aside the order dated 15th March, 2015 passed by the Judicial Magistrate, First Class, Nasik, in an application seeking maintenance under the Protection of Women from Domestic Violence Act, 2005 (for short "Domestic Violence Act"). The Magistrate proceeded to hold that the applicant was residing in her matrimonial home and the respondent i.e. the applicant herein has never raised any objection to such use of matrimonial home nor did the applicant try to evict the respondent-wife and children from the house and for the said reason, the Magistrate did not grant interim relief to the respondent.

2. Apart from the fact that no such relief was sought, the respondent-

wife had only sought a sum of Rs.30,000/- towards maintenance under the Domestic Violence Act on behalf of Respondent nos.2 (herself), 3 and 4, Respondent Nos.3 and 4 being children of the applicant and respondent no.2, who were then minors. The order of the Magistrate was challenged in the aforesaid criminal appeal. The Sessions Court found that the appellants are entitled to interim maintenance and the trial Court had erred in rejecting the prayer. In conclusion, the Sessions Court directed the applicant to pay sum of Rs.5,000/- per month to each of three appellants therein (respondent nos.2, 3 and 4 in the present application) as maintenance from the date of filing of the interim application Exhibit-5 which is dated 9th May, 2012.

3. Learned counsel appearing for the applicant states that the applicant requires some more time to pay the arrears of maintenance which have been outstanding and hence sought further time. As the matter was placed for hearing, this Court was not inclined to grant any further time since the applicant has been seeking adjournment time and again.

4. The learned counsel for the applicant submitted that a sum of Rs.4,000/- was ordered to be paid in separate proceedings under Section 125 of the Code of Criminal Procedure which fact had been suppressed by respondent no.2 in the interim application Exhibit-5 and, therefore, this fact of suppression must be held against respondent nos.2 to 4. Furthermore, it is submitted that a divorce petition came to be filed by the applicant in the year 2007 in which the interim maintenance of Rs.3000/- was directed to be paid. He further submitted that the proceedings under the Domestic Violence Act were initiated under Section 12 and in the first instance, the Magistrate Court had declined to

grant relief and there was no reason for the Sessions Court to grant relief effective from the date of application. He submitted that this aspect should have been taken into consideration. He therefore submitted that the present application be allowed and the impugned order dated 5th May, 2015 be set aside.

5. The learned counsel for respondent nos.2 to 4 during in the course of hearing while opposing present application submitted that the respondent disclosed the fact that the maintenance of Rs.4,000/- was being paid in the proceedings under Section 125 of the Code of Criminal Procedure. I find this correct since Exhibit-5 being Miscellaneous Application No.608 of 2012 was filed on 14th May, 2012 before the Lower Court by respondent no.2. In the application it has been stated that the divorce petition filed by the applicant had been dismissed because of non payment of interim maintenance amount and therefore at the time of filing of criminal appeal the said order was not in existence. The sum of Rs.4,000/- was ordered to be paid in the proceeding under Section 125 of the Code of Criminal Procedure. In the circumstances there is no merit in the submission that there is suppression of facts before the Magistrate Court or for that matter before the Sessions Court. This contention therefore has no merit.

6. In support of his contentions in rejoinder the learned counsel for the applicant relied upon a decision of the Supreme Court in *Juveria Abdul Majid Patni vs. Atif Iqbal Mansoori and Anr. (2000) 14 SCC 736* and in this respect relied upon paragraph 23 of the judgment and submitted that the Supreme Court had clearly laid down that monetary relief can be different from the maintenance. Monetary relief can be granted to meet the expenses incurred and losses suffered by the aggrieved person and the child of the aggrieved person as a result of the domestic violence, and in the present case there is no finding that there has been any incident of domestic violence. He further submitted that the applicant's husband had been ousted from his own house and thereafter he started staying separately. These are not the matters that we are concerned at

the moment. Suffice it to say that the interim order by way of interim maintenance is passed under provisions of the Domestic Violence Act. The issues are still to be finally decided by the trial Court. These submissions need not be considered at this stage and it will be open for the applicant to contest before the trial Court. I also find that in the application file under the Domestic Violence Act being Exhibit-5, respondent no.2 has averred that the applicant had left matrimonial home at his own accord and thereafter he married second time and has been residing with his second wife. This fact which has been denied on behalf of the applicant.

7. It is pertinent to note that the applicant had paid a sum of Rs.4,000/- to respondent no.2 towards interim maintenance of respondent nos.2 to 4 and has been seeking time to pay the balance amount which have fallen due in accordance with the impugned order. It is submitted that the quantum was too high and that the applicant being in service cannot afford to pay the said sum of money. Time and again adjournments were sought and granted on the ground of non payment and yet no concrete proposal has been forthcoming from the applicant as recorded in the order dated 29th September, 2016 of this Court. As and by way of last chance, the ad-interim order was continued, however, even thereafter the applicant failed to make commitment of paying the arrears of interim maintenance and the arrears continue to mount. On 3rd April, 2017 once again time was sought and granted. Even on 7th April, 2017 the arrears of maintenance were not paid as a result of which the interim order dated 30th August, 2016 stood vacated.

8. I see no ground to interfere with the impugned order. The contention that the impugned order is bad for want of finding on the domestic violence has no merit. Section 3 of the Act clearly sets out the various instances which constitute domestic violence which includes any acts, omission and commission which would harm or endanger the health, safety, life, limb or

well being both mental and physical, of the aggrieved person(s) and also includes economic abuse. The facts of the case clearly indicate that the applicant despite being legally wedded to respondent no.2 and being father of respondent nos.3 and 4, had not fulfilled his responsibilities towards his family members. In the circumstances there is no substance in the contentions of learned counsel for the applicant. The findings in the impugned order cannot be faulted on any of the grounds urged. Accordingly, I pass the following order :

- (i) The application is dismissed.
- (ii) There will be no orders as to the cost.

(A.K. MENON, J.)