

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

CRIMINAL APPLICATION NO.1025 OF 2014

Tahir Abdul kadar Shaikh
Vs.

.. Applicant.

The State of Maharashtra
and another

.. Respondents.

Mr. Prashant G. Pandey, for the Applicant.
Ms. M.R. Tidke, APP for State.
Mr. Rupesh A. Zade, for Respondent No.2.

CORAM : A.K.MENON, J.

DATED : 6TH JUNE, 2017

P.C. :

1. By this application, the applicant assails impugned order dated 21.06.2014 passed by the Sessions Court dismissing the Criminal Appeal No.767/2012, which impugned the order dated 02.11.2012 passed by the Metropolitan Magistrate 49th Court, Vikroli in C.C. No.97/N/2011 granting interim maintenance of Rs.6,000/- per month to the applicant effective from the month of April 2011 until further orders.

2. Heard both the sides. It is common ground that the application before the lower Court is still pending. The order dated 02.11.2014 was an interim order. The Sessions Court has considered the factual aspects by a reasoned order and observed that the trial Court had exercised its discretion correctly and the

order cannot be said to be arbitrary. Accordingly the appeal came to be dismissed. Today, on the hearing of this application, the learned Counsel for the applicant submits that the impugned order of the Sessions Court did not take into consideration the fact that the Magistrate's Court had passed the order for payment of maintenance without coming to a finding that there were instances of domestic violence. Learned Counsel submits that in the absence of such findings, the order is liable to be set aside. Therefore, he submits that the present application is liable to be dismissed and the order passed by the Metropolitan Magistrate's Court and Sessions Court respectively are liable to be set aside.

3. Section 23 of the Protection of Women from Domestic Violence Act, 2005 reads as under:

23. Power to grant interim and *ex parte* orders.—

“(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application *prima facie* discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an *ex parte* order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.”

4. Learned Counsel for the applicant (original respondent No.2) before the trial Court submitted that the Magistrate while exercising the powers under Section 23 has erred in presuming that the application discloses instances of domestic violence. He further submits that, in the present case, there was no such finding.

5. Paragraph No.2 of the order dated 02.11.2012, it takes into consideration the contents of the application which sets out the manner in which the respondent herein was harassed and ill-treated and on that basis, the Magistrate had come to the conclusion that the application was maintainable and had passed the interim order. Section 23 in my view, requires the Magistrate to be satisfied, *prima facie*, that the application discloses commission of an act of domestic violence, which in my view is satisfied.

6. Learned Counsel for the applicant also relied upon the judgment of the Delhi High Court in ***Kusum Sharma vs. Mahinder Kumar Sharma, 2015 0 AIR(Del) 53*** in support of his contention that the requirements of Section 23 has not been met. He placed reliance on para 19.1 in support of his contentions. In my view, the facts of this case do not justify

interference. The ground pressed in the present application is restricted to non compliance of requirement of Section 23 and there is no other challenge. Admittedly, the original complainant and respondent No.1 were married and the application was made during the validity of the marriage. The order impugned is only an interim order.

7. In the circumstances, I find no reason to interfere with the order. I, therefore, passed the following order:

- (i) Application is dismissed.
- (ii) No order as to costs.

(A.K. MENON, J.)