

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

CRIMINAL WRIT PETITION NO.4167 OF 2017

Pinki (Rupa) Sushil Mishra .. Petitioner
Vs.
State of Maharashtra & Anr. .. Respondents

Mr. Deepak Shukla a/w Mr. Shivkumar Mishra i/by M/s. B.N. Shukla & Co. for the petitioner.

Ms. M.M. Deshmukh, APP for the State.

Mr. Omprakash Pandey for the respondent no.2.

CORAM : R.D. DHANUKA, J.

DATE : 6th November 2017

P.C.:

. Rule, returnable forthwith. Learned APP for the State and the learned counsel for the respondent no. 2 waive service. The petition is heard finally.

2. By this petition filed under Article 227 of the Constitution of India, the petitioner has sought direction to issue writ, order and direction to quash and set aside and call for Records and proceedings of Application No.E-8 of 2017 and Interim Application being below Exhibit-7 filed therein for interim maintenance and after perusal of the records to quash and set aside the impugned order dated 13th July 2017.

3. A perusal of the order dated 13th July 2017 passed by the Judge of the Family Court No.2, Mumbai in Petition No.E-8 of 2017 which is impugned in this petition indicates that the learned Judge of the Family Court has kept the application for maintenance filed under Section 125 of the Code of Criminal Procedure in abeyance.

4. Mr.Pandey, learned counsel appearing for the respondent no.2 invited my attention to the order dated 12th October 2017 passed by the learned Metropolitan Magistrate, 66th Court at Andheri, Mumbai disposing of the application for maintenance under the provisions of the Domestic Violence Act.

5. In my view, the application thus filed by the petitioner under the provisions of the Hindu Marriage Act can be considered by the learned Judge of the Family Court no.2. Even otherwise, the applications filed by the party under the provisions of the Domestic Violence Act as well as under the provisions of Hindu Marriage Act are two separate and independent proceedings and can be heard independently. The impugned order dated 13th July 2017 is accordingly set aside.

6. Learned Judge of the Family Court No.2 is directed to hear the application for maintenance filed by the petitioner under Section 125 of the Code of Criminal Procedure expeditiously and not later than two months from today.

7. Rule is made absolute in aforesaid terms. No order as to costs. Learned Judge of the Family Court No.2, Mumbai to act on the authenticated copy of this order.

R.D. DHANUKA, J.