

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 4447 OF 2015

Neeraj Ramesh Jariwala

....Petitioner

Vs.

Sheetal Neeraj Jariwala and another

... Respondents

Mr. Nilesh V. Kalantri Advocate for Petitioner

Mr. S. S. Limaye for respondent no. 1.

Ms. V. V. Gangurde APP for the State.

CORAM: SMT.SADHANA S.JADHAV, J.

DATED : 4th APRIL, 2017.

P.C.

1) Heard.

2) Rule. Rule made returnable forthwith with the consent of the parties.

3) Petitioner herein happens to be respondent in case no. 8/DV/2012. By this petition, petitioner is challenging the order dated 26/04/2013 passed by learned Metropolitan Magistrate thereby granting interim maintenance in

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favour of original complainant who happens to be wife of the petitioner. The learned counsel for the applicant submits that in fact, petitioner had engaged an Advocate and therefore, had not attended the dates. According to the learned counsel for the petitioner, petitioner was under impression that Advocate engaged by him is diligently attending all dates. According to the learned counsel, it is only when he received a distress warrant, he learnt that an order has been passed against him. According to the learned counsel, petitioner has not been given any opportunity to file his say or plead his case. Petitioner herein is facing prosecution under the provisions of Protection of Women from Domestic Violence Act, 2005.

4) Perused the Rozanama. It is clear that notice was issued on 21/02/2012 and the returnable date was 26/03/2012. Petitioner was present along with his Advocate and filed their Vakalatnama. Petitioner had sought an adjournment for filing reply and the returnable date was 20/04/2012. It is pertinent to note that respondent had not attended the dates on 04/05/2012 and thereafter. It is further pertinent to note that since 12/10/2012, respondent and his Advocate were absent. Matter was adjourned from time to time. On 12/07/2013 also

respondent and his Advocate did not remain present. Finally, distress warrant was issued below Exhibit 8 and thereafter, petitioner had learnt that an order was passed in favour of original applicant. It was only in December 2013 that the court was apprised of the fact that the Sessions Court has stayed the proceedings. Petitioner had filed an application seeking condonation of delay before the Sessions Court. Thereafter, respondent had not attended the dates. The learned Sessions Court by an order dated 27/08/2015 has rejected the application seeking condonation of delay. The learned Revisional Court had rightly observed as follows:

“Parties to the petition are involved in various kinds of litigation arising out of their matrimonial disputes including criminal cases. As such, parties are well aware of the stages and developments of the case. Under such circumstances, the contention on the part of the petitioner that he was not aware of interim maintenance order till the distress warrant was issued against him, cannot be sustained. The application does not mention any other reasonable ground for the delay in presenting the appeal. On the contrary, it appears to be evident that the applicant has neglected to attend the Court for hearing of the interim application and even to pay the maintenance after passing of such order whereas the appeal came to be presented only when it became unavoidable for the applicant to neglect the DV

proceedings and avoid the order therein as warrant came to be issued against him”.

5) Learned counsel for the applicant submits that petitioner has complied with the orders passed by the Trial Court till 27/08/2015 and thereafter, he has not paid the maintenance as he has filed writ petition in this Court. Writ petition is of the year 2015. The Court cannot be oblivious of the fact that original proceedings are of the year 2012 and at this stage, it would not be appropriate to set aside an order of maintenance passed in the year 2013 on the ground that it is *Ex-parte* order.

6) The learned Appellate Court has assigned justifiable reasons while rejecting the application seeking condonation of delay. No interference is called for. Moreover, both counsel agree that at present the case is posted for recording of evidence. At this stage, it would not appropriate to revert back to square one to hear and decide the interim application on merits. This Court cannot be oblivious of the fact that provisions under Domestic Violence are benevolent provisions. Hence, writ petition stands dismissed.

7) Petitioner shall deposit arrears before the Trial Court as far as possible within 8 weeks from today.

8) Rule is discharged.

(SMT. SADHANA S. JADHAV, J.)