

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

**WRIT PETITION NO. 4000 OF 2016**

Vishwanathan Veerasami

... Petitioner

**vs.**

Sagay Mary Vishwanathan Veerasami & ors.

... Respondents

Mr. B. S. Nayak, Advocate for the petitioner.

Mr. V. U. Sherkhane, Advocate for respondent no.1.

Mr. Rakesh Singh a/w Mr. P. Mishra i/by M. V. Kini & Co.,  
Advocate for respondent no.2.

Mr. S. R. Agarkar, A.P.P. for the State/respondent no.3.

**Coram** : Smt. R. P. SondurBaldota, J.

**Date** : 8<sup>th</sup> February, 2017

**P.C. :**

**1.** This petition filed under Article 227 of the constitution of India seeks three reliefs. The first relief is for quashing of the proceedings filed by respondent no.1 under the provisions of Protection of Women from Domestic Violence Act. The second relief is directed against the order dated 29<sup>th</sup> June, 2016 passed by the Sessions Court allowing the appeal preferred by respondent no.1 and directing the petitioner to pay interim maintenance of Rs.5,000/- per month to her from the date of the application i.e. 22<sup>nd</sup> April, 2014 till the disposal of the case. The third relief is a direction to respondent no.2, the Bombay Port Trust to release his gratuity amount.

**2.** The order impugned in the petition directs the petitioner to pay interim maintenance of Rs.5,000/- to respondent no.2 every month pending the main proceedings. It

also directs respondent no.2, the Bombay Port Trust to release the monetary benefit to the petitioner subject to payment of maintenance to respondent no.1 as directed.

**3.** Mr. Nayak, the learned advocate for the petitioner submits that the petitioner challenges the order on two grounds. Firstly that the order has been obtained by respondent no.1 by playing fraud upon the Court and secondly that the Sessions Court had no jurisdiction to award maintenance once the application for maintenance is rejected by the trial Court.

**4.** As regards the fraud allegedly played by respondent no.1 upon the Court he submits that respondent no.1 has suppressed from the Court that she earns a sum of Rs.10,000/- per month by doing tailoring work and she also receives a sum of Rs.20,000/- per month by letting out the ancestral property at the native place. She is also said to be receiving a sum of Rs.5,000/- per month from each of the four daughters. Mr. Nayak concedes that there is no material to support the claim of the petitioner that respondent no.1 has been earning either from her tailoring work or by letting out the premises at the native place except for the bare word of the petitioner. As regards the payment made by the daughters to respondent no.1, the petitioner cannot be permitted to complain about the same since any support received by respondent no.1 from the daughters does not absolve the petitioner from the responsibility and liability of maintaining her.

**5.** The second objection to the interim order, of jurisdiction of the Sessions Court to award maintenance, is stated at ground (k) and (l) of the petition. It is contended

therein that in view of Section 23 of the Protection of women from Domestic Violence Act, the jurisdiction to grant interim maintenance is with the learned Magistrate if he deems it just and proper. It is the Magistrate who has to be satisfied that maintenance is required to be awarded to respondent no.1. Once that discretion is exercised by the trial Court, the Sessions Court should not be slow interfering with the prima facie conclusion drawn by the Magistrate. The argument needs to be only stated to be rejected. Though under Section 23 of the Protection of Women from Domestic Violence Act, an aggrieved person has to move the Court of Magistrate for reliefs under the Act, the orders passed by the Magistrate are not final but are subject to correction by higher Court i.e. Sessions Court in view of the appeal provided therefrom.

**6.** Lastly Mr. Nayak submits that the real grievance of the petitioner is to withholding of the amount of gratuity by respondent no.2, Bombay Port Trust. By prayer clause (c) of the petition, the petitioner seeks direction to respondent no.2 to forthwith release the gratuity amount with interest @ 12% p.a. from it's due date till realisation. This relief sought by the petitioner is beyond the scope of the present petition, which arises out of the proceedings initiated by respondent no.1 under the Protection of Women from Domestic Violence Act.

**7.** As regards the first prayer of quashing of the proceedings filed by respondent no.1, considering the pleadings it cannot be said that the same does not hold any material to proceed against the petitioner. Thus there is no merit in the petition. The same is accordingly dismissed.

**8.** Mr. Singh, the learned advocate for respondent no.2 states that Bombay Port Trust has deposited an amount of Rs.1,40,000/- in the trial Court i.e. Metropolitan Magistrate, 29<sup>th</sup> Court, Dadar. Mr. Sherkhane, the learned advocate for respondent no.1 states that in view of pendency of the present petition the trial Court has not permitted respondent no.1 to withdraw the amount. Respondent no.1 is at liberty to withdraw the amount.

**[Smt. R. P. SondurBaldota, J.]**