

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 136 OF 2015**

1. Mr. Abdul Rahim Shah Muzavar,
Major in age, residing at H. No.1385,
Fariza Manzil, Mandel, Tivim, Mapusa, Goa.
 2. Mrs. Reshma Shah,
Daughter of Mr. Abdul Rahim Shah Muzavar,
Major in age, housewife
residing at H. No.1385,
Fariza Manzil, Mandel, Tivim, Mapusa, Goa.
 3. Mrs. Jasbeen Shaikh,
Wife of Mr. Shaikh Nouruddin,
Major of age, housewife,
residing Near Nuha House,
Opposite Forest Department,
Hath Vaddo, Valpoi, Goa.
- Petitioners

V e r s u s

1. Mrs. Naznin Shah,
Wife of Mr. Usman Naveed Shah Muzavar,
28 years, housewife,
permanently residing at H. No.1385,
Farizam Manzil, Mandel, Tivim,
Mapusa, Goa,
presently residing at H. No.146/C,
Abdulla Manzil, Fatima Colony,
Vasco da Gama, Goa 403801.
 2. Mr. Usman Naveed Shah Muzavar,
Son of Mr. Abdul Rahim Shah Muzavar,
39 years, service,
Permanently residing at H. No.1385,
Farizam Manzil, Mandel, Tivim,
- (deleted as per order dated
19.10.2015 of this Court).**

Mapusa, Goa.
Presently working at Lofat Nutritional
Centre Hawalli, AL Asimah, Kuwait,
Bneid Algar, Block 1,
St. 80, Amlak Tower, 8th floor,
Kuwait.
**(Amendment carried out as per
order dated 28/7/2015 and deleted)**

.... Respondents

Mr. Agha Iftikhar, Advocate for the Petitioners.
Mr. Prasad U. Dessai, Advocate for Respondent no. 1.

Coram:- C. V. BHADANG, J.
Date:- 8th January 2018.

Oral Judgment:

The petitioners are the in-laws of the first respondent, who is married to the second respondent. The first respondent has filed an application under the Protection of Women from Domestic Violence Act, 2005 (Act, for short) against the second respondent. Initially the learned Magistrate by judgment and order dated 5/8/2014 had allowed the application granting certain reliefs to the first respondent. That was challenged by the petitioners in appeal before the learned Sessions Judge. The learned Sessions Judge partly allowed the appeal on 12/12/2014 and while setting aside the impugned order passed by the learned Magistrate, remanded the matter back to give an opportunity to the petitioner to file reply and then to dispose off the matter in accordance with law.

2. The present petition arises out of a prayer by the petitioners to delete certain issues which was not allowed by the learned Magistrate by order dated 16/7/2015 which was challenged by the petitioner in Criminal Appeal no.62/2015. That appeal has been partly allowed on 28/9/2015 thereby deleting issues no.3, 4 and 6. The petitioners feeling aggrieved by the refusal to delete issues no.1, 2 and 5 have approached this Court.

3. I have heard Shri Agha, the learned counsel for the petitioners and Shri P. Dessai, the learned counsel for the respondents.

4. On hearing the learned counsel for the parties, I do not find that any case for interference is made out. The learned Magistrate has framed the following issues on 10/7/2014 :

1. Whether the applicant proves that the respondents dispossessed the applicant from the matrimonial house?
2. Whether the applicant proves that at the time of marriage she was given the articles listed in the list?
3. Whether the applicant proves that she is unable to maintain herself and her daughter as such entitled for monthly maintenance of Rs.25,000/- each?
4. Whether the applicant proves that she spent a sum of Rs.63,935/- during the time of pregnancy and have also undergone ear surgery in December 2013?
5. Whether the applicant proves that during the time of her marriage an amount of Rs.20,000/- was given to the respondents?
6. Whether the applicant proves that she has suffered damages to the extent of Rs.5 lakhs due to the harassment, torture and loss meted out by the

respondents as such entitled for the
compensation/damages?

7. What relief? What order?

5. The appellate court has directed deletion of issues no.3, 4 and 6. In so far as the issue no.1 is concerned, it is submitted that the petitioner in her application has alleged that she had left the matrimonial home and as such, the contention is that there is no dispossession of the respondent no.1 by the petitioners. In so far as the issue no.2 is concerned, it is contended that the petitioners have admitted that they are in possession of some of the articles out of the list presented by the first respondent. In so far as the issue no.5 is concerned, it is submitted that the amount was not paid to the petitioners and thus the issue no.5 also cannot be said to be properly framed.

6. Normally this Court would be slow while exercising the jurisdiction under Article 227 of the Constitution of India to interfere in orders of the present nature, unless there is a manifest injustice arising out of the impugned order. The main application filed by the first respondent is still pending before the learned Magistrate. It would appear that the burden to establish the issue nos.1, 2 and 5 is entirely cast on respondent no.1. and it is for her to discharge the same. The petitioners would get an opportunity to contest the application on merits and in accordance with law. In that view of the matter,

no case for interference is made out. The petition is accordingly dismissed. It is however made clear that this Court has not expressed any opinion on the rival contentions of the parties on merits in so far as the issues no.1, 2 and 5 are concerned.

C. V. BHADANG, J.

ap/-