

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

**WRIT PETITION NO.698 OF 2018**

Pravin Vilas Pise & Ors.

... **Petitioners**

**V/s.**

Pratibha Pravin Pise & Anr.

... **Respondents**

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Mr. Swaroop Karade for the Petitioners.

Mr. Anand Patil I/by Anand Patil & Associates for Respondent No.1.

Mr. A.R. Patil, APP for the Respondent State.

**CORAM : A.S.GADKARI, J.**

**DATE : 25<sup>th</sup> SEPTEMBER 2018**

**P.C.:**

1. By the present petition under Article 227 of the Constitution of India, the petitioner has impugned the Judgment and Order dated 02.01.2018 passed by the learned Additional Sessions Judge, Kolhapur in Criminal Appeal No.157/2016, dismissing the said appeal and confirming the interlocutory order dated 03.09.2016 passed by the learned 6<sup>th</sup> Judicial Magistrate First Class, Kolhapur in Criminal Miscellaneous Application No.64/2015 under Section 23 of The Protection of Women from Domestic Violence Act, 2005 (the said Act).

2. Heard the learned counsel for the petitioner and the learned

counsel for Respondent No.1. Perused the record.

3. Petitioner No.1 is the husband of Respondent No.1. Respondent No.1 filed an application under Section 12 and other allied provisions of the said Act in the Court of Judicial Magistrate First Class, Kolhapur. An application under Section 23 of the said Act for interim relief of maintenance was also filed claiming maintenance @Rs.30,000/- per month on the ground that, Petitioner No.1 is a Government Servant and is earning approximately Rs.70,000/- per month. The Trial Court by its Order dated 03.09.2016 passed under Section 23 of the said Act was pleased to grant interim maintenance @Rs.8,000/- per month to Respondent No.1. Feeling aggrieved by the said order, the petitioners preferred Criminal Appeal No.157/2016 in the Court of Additional Sessions Judge, Kolhapur, which has been turned down by the impugned Judgment and Order order dated 02.01.2018.

4. Learned counsel for the petitioners submitted that, Respondent No.1 is highly qualified lady and she can earn her livelihood by getting employment, but she is not making any efforts for searching employment and is sitting idle at home only with a view to get maintenance from Petitioner No.1. He further submitted that,

Respondent No.1 is capable of earning substantial amount in view of her educational qualification, and therefore, the interim maintenance granted by the Trial Court in her favour is not proper and right. He therefore submitted that, the impugned Orders passed by both the Courts below be set aside.

5. Per contra, learned counsel for Respondent No.1 submitted that, there is a difference between “capable of earning” and “actual earning” and the said two are different aspects. He further submitted that, merely because the wife is capable of earning, is not sufficient reason for not availing maintenance. In support of his contention, he relied on the decision of the Supreme Court in the case of *Shailaja & Anr. Vs. Khobhanna reported in 2017 ALL MR (Cri.) 3107*. He, therefore, submitted that, there is no need to interfere with the interim maintenance granted by the Trial Court.

6. At the outset, it is to be noted here that, the main application filed by Respondent No.1 under Section 12 and other allied sections of the said Act is pending for final adjudication before the Trial Court. The Trial Court by accepting *prima facie* material available on record has passed the impugned interlocutory order dated 03.09.2016, which has been upheld by the Appellate Court. The

petitioners have not produced on record any evidence even to remotely suggest that, in the city of Kolhapur, a job suitable to Respondent No.1, which is commensurate with her educational qualification is infact available and despite having reasonable opportunity, the Respondent No.1 did not seek employment for herself. As noted earlier, the main application preferred under Section 12 of the said Act is pending for final adjudication before the Trial Court and the petitioners are at liberty to lead evidence to support their case at the time of final adjudication of the case.

7. As the impugned order herein is an interlocutory order and there are concurrent findings recorded by both the Courts below, this Court is of the considered view that, the impugned Orders do not require any interference by this Court.

8. Petition is accordingly rejected.

9. In pursuance of order dated 05.09.2018, the petitioners have deposited a sum of Rs.50,000/- in the Registry of this Court. Respondent No.1 is permitted to withdraw the said amount as per the directions issued by this Court by its order dated 07.08.2018.

**(A.S.GADKARI, J.)**