

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3193 OF 2018

Sagar Sadashiv Bamnikar & Ors. .. Petitioners
Versus
Shruti Sagar Bamnikar & Anr. .. Respondents

Mr. Satyavrat Joshi for petitioner
Mr. Bhooshan Mandlik for respondent No.1

CORAM : M.S.SONAK, J.

DATE : 3rd December 2018.

P.C.

Heard learned Counsel for the parties. The challenge in this petition is to the order dated 6th June 2018 by which the Sessions Court has set aside the order dated 16th September 2017 made by the learned Magistrate in the proceedings under Protection of Women from Domestic Violence Act, 2005 (D.V.Act) and directed the petitioner to pay interim maintenance of Rs.25,000/- per month to the respondent from the date of the order.

2] Mr. Joshi learned Counsel for the petitioner points out that the respondent had suppressed the relevant and vital

particulars regarding the institution of and withdrawal of divorce petition by her prior to initiation of proceedings under the D.V.Act. He points out that the factum of institution and withdrawal of the divorce proceedings was extremely vital and suppression of such particulars did not entitle the respondent to maintain any claim for interim maintenance or even final maintenance. He submits that the Magistrate has correctly appreciated this objection and dismissed the claim for interim maintenance. The Sessions Court erred in reversing order of the learned Magistrate. Mr. Joshi further points out that in any case the quantum of Rs.25,000/- is exorbitant and excessive. He submits that the respondent resides in Kolhapur and the respondent has not given any particulars as to why she requires this much amount by way of interim maintenance. Mr. Joshi submits that on this ground alone the impugned order warrants interference.

3] Mr. Bhushan Mandlik, learned Counsel for the respondent defends the impugned order on the basis of reasoning reflected there.

4] The rival contentions now fall for determination:-

The record bears out that the respondent prior to institution of proceedings under the D.V. Act, had instituted proceedings before the family court at Kolhapur seeking inter alia divorce.

5] Such proceedings were withdrawn by the respondent as is reflected from the order dated 18th January 2017. This order however, makes it abundantly clear that the proceedings were allowed to be withdrawn with liberty to file fresh petition.

6] The learned Sessions Judge has quite clearly hold that it is not suppression of any and every particular that is relevant in such matters. The suppression must be of some vital and relevant matter. Further, on the basis of such suppression, the party concerned must have attempted to gain some undue advantage, which advantage, the party may not have otherwise been entitled to, had the true and correct particulars been disclosed in the first instance.

7] The facts of the present case, non reference to the institution or withdrawn of proceedings for divorce certainly did not constitute suppression of relevant and material particulars in the context of proceedings under the said Act or in the context of the claim for interim maintenance under the D.V.Act. The learned Magistrate was, therefore, not right in non suiting the respondent on the said ground. Learned Sessions Judge was, therefore, justified in correcting the error in to which the learned Magistrate had fallen. Accordingly, there is no merit in the first contention raised by Mr.Joshi in support of the present petition.

8] The second contention relates to the quantum of interim maintenance. From a perusal of the impugned order, it is seen that the income of the petitioner as reflected in the salary statement for the month of August 2017 was Rs.78,345/- per month. The feeble submission that the petitioner has other responsibilities like maintenance of his parents is ex facie untenable. The record indicates that the petitioner's father is a high ranking Government servant and, therefore, it is not at all believable that the petitioner is required to contribute any amounts towards the maintenance of his

parents. Even assuming that his father has, by now, retired, the father must be drawing pension or other retiral benefits.

9] The circumstance that the respondent resides at Kolhapur has been taken into consideration. It is necessary to note that apart from this claim of maintenance of Rs.25,000/- per month, the respondent has not applied for any further amount. Learned Sessions Judge has, therefore, held that since the claim includes of monetary claim of the wife in the context of interim maintenance, it cannot be said that this amount is quite excessive or exorbitant.

10] Learned Sessions Judge has also adverted to the market conditions and the amount that the respondent will require, taking into consideration the status enjoyed by her whilst in active matrimony. In such matters some amount of guess work is permissible. The award by the learned Sessions Judge is within the bounds of reasonability. Therefore, there is no case made out to warrant interference, even with the quantum of interim maintenance now awarded.

11] Accordingly, the petition is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

12] It is however made clear that the observations in the impugned order as also in the present order are prima facie and in the context of determining the issue of interim maintenance. Therefore, the learned Magistrate need not be influenced by such observations whilst deciding the main matter finally. All contentions of both sides are kept open.

13] Since the petition is dismissed, ad-interim order granted earlier are also vacated. Accordingly, respondent shall be at liberty to withdraw the amounts deposited by the petitioner in terms of ad-interim order made by this Court on 13th August 2018.

(M.S.SONAK, J.)