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

CRIMINAL WRIT PETITION NO.434 OF 2018

Zankhana Ashish Barai and Anr.	...Petitioners
Versus	
Ashish Vallabhdas Barai and Ors.	...Respondents

Mr.S.R.Gaud, for the Petitioners.

Mr.H.M.Inamdar, for the Respondent No.1.

Mr.S.R.Shinde, A.P.P for the Respondent No.5-State.

CORAM : REVATI MOHITE DERE, J.

DATE : 2nd FEBRUARY, 2018

P.C. :

1. Heard learned counsel for the parties.

2. By this petition, the petitioners have impugned the order dated 23rd January, 2018, passed by the learned Judicial Magistrate First Class, Thane, by which the learned Magistrate was pleased to reject the petitioners' application for taking the matter on Board, despite the extreme urgency to pass residential/protection orders.

3. Learned Counsel for the petitioners submits that the petitioners had filed a D.V. complaint under Section 12 of the Protection of Women from Domestic Violence Act, in the Court of the learned Judicial Magistrate First Class and had sought certain interim reliefs as against the respondent nos.1 to 3 therein. The learned Magistrate did not pass any interim reliefs on the interim applications and instead adjourned the matter to 6th February, 2018. Before the returnable date, an interim application was moved by the petitioners on 21st December, 2017. However, no orders were passed on the said application and the same was also adjourned to 6th February, 2018. Learned Counsel for the petitioners further submitted that on 22nd January, 2018, as the respondents restricted the petitioners' access to the shared household, the petitioners approached the Navpada Police Station, however, the police refused to take any action for want of Court orders. In view of the aforesaid, on 22nd January, 2018 itself, the petitioners again approached the learned Magistrate and informed the Trial Court about the same. It is informed that the Trial Judge asked the petitioners to come on the next day i.e. 23rd January, 2018. On 23rd January, 2018, the petitioners approached the Trial Court and filed applications seeking certain urgent reliefs. The learned Magistrate refused to take the matter on Board and instead passed

the impugned order dated 23rd January, 2018. The petitioners hence filed an Appeal against the said order, however, the learned Sessions Judge refused to entertain the Appeal, as the same was not maintainable. Hence, this petition.

4. Learned Counsel for the petitioners states that the Respondent No.1 had orally made a statement before the learned Magistrate that he will not dispossess the petitioners, till the interim applications are decided and that in view of the oral statement made by the Respondent No.1, no written orders were passed by the learned Magistrate. Learned Counsel for the petitioners submitted that despite the oral statement having been made by the Respondent No.1, Respondent No.1 breached his statement and locked the premises in breach of his statement made before the learned Magistrate.

5. Perused the papers as well as the impugned order. It is not in dispute, that the petitioners had filed a D.V. Complaint in the Court of the learned Magistrate on 29th November, 2017. Alongwith the said application, the petitioners had also filed interim applications and had

sought certain urgent reliefs, having regard to the facts of the case. It appears that the learned Magistrate instead of considering the interim applications adjourned the case to 6th February, 2018. The petitioners during the pendency of this application, were staying in Flat No.402, Tuljabhavani Apartment, 4th Floor, Edulji Road, Charai, District – Thane, which is stated to be a shared household. The petitioners on 22nd January, 2018, found the house locked, when they returned home, after attending a pooja ceremony. As the petitioners were dispossessed, the petitioners approached the police, who refused to take any action for want of Court orders. Thus, the petitioners were constrained to approach the Trial Court and the Trial Court asked the petitioners to come on the next day i.e 23rd January, 2018. Pursuant thereto, the petitioners filed applications and sought certain urgent reliefs alongwith an application for taking the matter on Board, however, the learned Magistrate instead of considering the urgency and taking the matter on board, passed the impugned order, which reads thus:-

“Court is quite busy. Has no extra time to deal this application.

Today is V.C. board (i.e. under trial). Hence rejected.”

6. It is pertinent to note, that the Protection of Women from Domestic Violence Act, was enacted to provide for more effective protection to women, who are victims of violence. The Act safeguards the rights of the aggrieved person and provides for various reliefs i.e. protection orders, residence orders etc. The learned Magistrate by the impugned order failed to take into consideration the extreme urgency and the object of the D.V. Act. The learned Magistrate was in serious error, by refusing to consider the application, more particularly since the petitioners were thrown out of the house and also as Respondent No.1 had breached his statement. The conduct of the learned Magistrate was completely unjustified and exhibits lack of sensitivity. Considering the extreme urgency, the learned Magistrate shall take the application on Board on 5th February, 2018 and pass appropriate orders on the said application, on the very same day, considering the fact that the petitioners are thrown out from the house, by the Respondent No.1.

7. Considering the aforesaid, the impugned order is quashed and set aside. The applications are restored back to its original file.

8. The learned Magistrate shall take the said application/or any other application filed by the petitioners, on Board and consider granting urgent reliefs, to the petitioners, in accordance with law. The learned Magistrate, shall decide the application on the very same day, considering the urgency in the matter. The learned Magistrate shall also consider whether the Respondent No.1 has breached his oral statement made before the Court and take appropriate action, if warranted.

9. Petition is accordingly disposed of on the aforesaid terms.

10. It is made clear, that this Court has not considered the petition on merits. All contentions of all the parties are kept open.

11. Learned Counsel for the Respondent No.1 states that the Respondent No.1 will remain present before the learned Magistrate on 5th February, 2018 at 11.00 a.m.

12. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.