

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.221 OF 2018
WITH
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Meera Somil Lodaya @ Meera
Chandrakant Thakkar .. Applicant
Versus
Somil Hirji Lodaya and ors .. Respondents

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Mr. Rajan V. Thakkar for the applicant.
Mr.S.P. Kadam I/b Mr. Omkar Gopal Nagwekar for respondent
nos.1 to 4.
Ms.P.P. Shinde, APP for the State.

CORAM: SMT. BHARATI H.DANGRE, J

DATED : 7th SEPTEMBER, 2018

ORAL JUDGMENT :-

1 The three Revision Applications are filed by the wife under Section 401 of the Code of Criminal Procedure. The applicant wife is aggrieved by the order passed by the Sessions Court at Mumbai in Criminal Appeal No.880 of 2015 arising out

of the order passed by the Metropolitan Magistrate, 73rd Court, Vikhroli, Mumbai. The applicant-wife in whose favour certain interim orders were passed alleges disobedience of the said orders. She moved three applications on three different dates which were exhibited as Exhibit-26, Exhibit-28 and Exhibit-35 before the Metropolitan Magistrate, Vikhroli. The relief prayed in all the three applications was for initiating appropriate action for non-compliance of the interim orders which were granted by the Magistrate on 17th September 2013 and 12th January 2014. In the said applications, she alleged that inspite of an order granting protection, the same was not complied with, resultantly, she prayed for action against the respondents for disobedience of the order.

2 The learned Magistrate proceeded to deal with the said three Exhibits and took a note of the fact that separate applications have been moved on different occasions under different heads and several prayers were made in the said application. It is mentioned that Exhibit-26 which is filed on 4th December 2013 is for protection and applicant had reiterated

how she came to be dispossessed from the said flat. Exhibit-28 is also a similar application where the prayer is made for initiating contempt action against the respondent no.2. Application-Exhibit no.35 was moved on 11th August 2014 for taking cognizance of offences under Section 156(3) of the Code of Criminal Procedure.

On hearing the learned counsel for the parties and taking note of Section 31 of the Domestic Violence Act, 2005, the learned Magistrate proceeds to record that the breach of protection order by respondent is itself made an offence under Section 31 of the Act and penalty is provided for committing breach of protection orders. The learned Magistrate observes thus :-

“On perusal of section 31, it transpires that this clause provides that the breach of protection order or an interim protection order shall be an offence under the proposed litigation, punishable with imprisonment of either description which may extend to one year or with fine which may extend to Rs.20,000/- or both. Thus, separate remedy is given to the aggrieved person for committing of breach of protection order by the respondents. In eventuality of breach of protection order of the Court, applicant can file complaint u/s.31 of the Act and prosecute the concerned respondent for the act done by him. This being position, no action for

contempt of court can be initiated for breach of protection order by the respondent. There is no such provision for initiating contempt action as prayed by the applicant. Applicant is at liberty to file separate complaint against respondent for commission of offence punishable u/s.31 of the Act. Consequently, I hold that present applications are liable to be rejected”.

The learned Magistrate has, therefore, concluded that a separate remedy is provided to the person alleging breach of protection orders and there is a separate remedy provided of prosecuting the respondent and contempt proceedings is not permissible remedy, resultantly, all three exhibits filed by the applicant came to be rejected by the order dated 15th September 2015.

3 Being aggrieved, the applicant was constrained to approach the Sessions Court by filing an appeal. The Appellate Court considered the provision of Section 31 and Rule 15 of the Domestic Violence Act. The Court observed that the proper course is to take cognizance of the offences in accordance with the provisions of Chapter XXI of the Code of Criminal Procedure and try them summarily. The Court also takes cognizance of the procedure that is prescribed in Rule 15 and the manner in

which the charge is required to be framed. Conclusively, the Additional Sessions Judge arrived at a conclusion that there is a specific procedure prescribed for initiating an action in case of breach of protection orders and mere submission in the written notes of arguments is not sufficient for initiating the proceedings against the respondent.

The Addl. Sessions Judge reiterates the finding of the Magistrate that the aggrieved person should file the complaint before the Court or police and since there are no proceedings filed under Section 31 of the Domestic Violence Act, in the present case, it is not necessary to interfere in the order passed by the Magistrate. Resultantly, the Appeal is dismissed and the order passed by the Magistrate has been upheld.

4 Being aggrieved, the three Revision Applications have been filed. The learned counsel for the applicant would submit that the Magistrate as well as the Sessions Court ought to have taken into consideration the gist of the application preferred by the wife and though it was not captioned as

“Application under Section 31”, in sum and substance, what was stated before the Court was that the order passed by the Magistrate was being disobeyed and not complied with, and therefore, it was prayed that an appropriate action be taken so as to prevent the disobedience of the said order. The learned counsel would submit that nothing prevented the Magistrate from taking cognizance of the said complaint and in fact, it is the specific submission of the learned counsel that on the said application, the learned Magistrate had in fact issued notice, meaning thereby that he had taken cognizance and has also directed the respondent to file their reply by an order dated 4th December 2013. However, according to the learned counsel, the Exhibits came to be rejected with an observation that the contempt jurisdiction is not available, and therefore, proceedings cannot be entertained. Learned counsel for the respondent would submit that the Court below had granted liberty to the applicant to file appropriate proceedings under Section 31 of the Act and therefore, no prejudice is caused to the applicant by passing of the impugned orders. It is the specific submission of the counsel for the respondent that if

certain procedure is prescribed under a statute, then, the procedure must be strictly followed and complied with and merely on the ground that procedure cannot be made handmaiden of justice, the jurisdiction which is not available cannot be invoked.

5 I have carefully perused the Revision Applications along with its annexures and also a compilation of documents tendered on record by the applicant which includes the three complaints which have been preferred to the Magistrate and also the copy of the written arguments tendered in the Appeal. I have also heard the submissions advanced on behalf of the respective parties.

Perusal of the Domestic Violence Act, 2005 would reveal that the said legislation is enacted for the purpose of protection of Women from Domestic Violence and a remedy is provided to an aggrieved person in Chapter IV of the said Enactment by preferring an application to the Magistrate seeking various reliefs. The reliefs enumerated in the Chapter includes the various orders which can be passed under Sections

19, 20, 21, 22. Further, the Magistrate is also empowered under Section 23 to grant ex-parte interim order as he deems fit on consideration of the application of the aggrieved person. Against the said order, an Appeal is provided under Section 29 of the Court of Sessions.

Chapter V of the Domestic Violence Act, 2005 contains two important Sections i.e. Section 31 and 32. Section 31 provides for breach of protection orders by the respondent and it reads thus :

31. Penalty for breach of protection order by respondent.—

(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrates may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

6 Section 32 prescribes the manner in which cognizance of the said offence under sub-section (1) of Section 31 is liable to be taken and the said offence is made cognizable and non-bailable. It would also be necessary to refer to Rule 15 of the Rules framed under the Protection of Women from Domestic Violence Act, 2005, in exercise of powers conferred under Section 37 of the Act of 2005. Rule 15 deals with breach of protection orders and perusal of the said rules would reveal that an aggrieved person may report of the breach of the protection orders or an interim protection order to the Protection Officer. Such a report shall be in writing and duly signed by the aggrieved party and then the Protection Officer is duty bound to forward copy of such a complaint to the concerned Magistrate for appropriate orders. It is also permissible for the aggrieved person, if she so desires to make a complaint against the breach of the order directly to the Magistrate or the police, if she chooses. Further, sub-rule (6) of Rule 15 prescribes the method in which the charge is to be framed by the Magistrate and sub-rule (8) provides that breach of the protection order or an interim order shall be immediately

reported to the local police station and shall be dealt with as a cognizable offence as provided under Section 31 and 32.

7 On perusal of Section 31 and 32 along with Rule 15 of the Domestic Violence Rules, 2006, it is crystal clear that the aggrieved person can make a grievance to the Protection Officer about non-compliance of the interim orders and at the same time, it is also open to the aggrieved person to approach the Magistrate directly. Upon such a grievance being made before the Magistrate, the Magistrate is then empowered to deal with such breach of orders. Sub-section (2) of Section 31 prescribes that the offence under sub-section (1) shall, as far as practicable, be tried by the Magistrate, who has passed the order, the breach of which has been alleged to have been caused by the accused. The entire purport of the scheme contained in Chapter V including Rule 15 of the Rules of 2006 is intended to protect the aggrieved person, keeping in tune with the spirit of the Enactment to provide for effective protection of Rights of Women guaranteed under the Constitution and who are the victims of Domestic Violence within the family. If an order is passed by the Magistrate after taking into consideration the complaint made by the aggrieved party and specifically if it is an order of interim nature which

the Magistrate is empowered to pass under Section 23 of the Enactment and if there is disobedience of this order, then, the aggrieved party should not be left without remedy nor the Magistrate cannot be said to be powerless to take cognizance of the breach of his orders.

If this is the purport of Section 31 of the Enactment and the procedure that has been carved out by virtue of Rule 15 of the Domestic Violence Rules, 2006, then, it is immaterial in what form the attention of the Magistrate is invited to the breach of orders. It is the specific case of the applicant and on perusal of the applications preferred by the applicant, would reveal that her insistence was to take cognizance of the breach of the interim orders that have been passed by the Magistrate and that is what she had prayed for in all the applications. The wordings and the prayers in the applications may lead to an inference that she had sought to invoke the contempt jurisdiction of the Court, however, the Magistrate is aware that there is no power to punish for contempt under the Domestic Violence Act vested in him. However, he can always exercise the powers and make the breach of orders an offence and make it punishable by adopting the procedure that is prescribed under Chapter XXI of the Code of Criminal Procedure. If the breach of orders were brought to the notice of the Magistrate, then, it was nothing else but shirking off his responsibility and the onus upon him to protect the right of the aggrieved person,

which he himself has protected by passing interim order under Section 23 of the Enactment and he was duty bound to take cognizance of the said complaint irrespective of the caption and the language used in the said application. The gist of the application, in any contingency, would lead to an irresistible conclusion that what was sought by the applicant wife was an immediate action against the accused persons for breach of the interim order passed by the learned Magistrate.

8 In such circumstances, the stand taken by the Magistrate and concurred by the Addl. Sessions Judge cannot be approved of in the wake of object with which the Act of 2005 has been enacted and the purpose for which the Magistrate is clothed with the powers under Section 31 and 32 of the said Enactment. If an enactment contains a provision and authorizes a particular authority to exercise its power, in order to grant protection to a destitute woman who has been the pivotal force of the entire Enactment of 2005, and being referred to as “aggrieved person”, then the power which is vested in a particular authority, must be exercised for the advancement of the purpose for which it was conferred by the Statute. The Magistrate, in present circumstances, has refused to discharge the responsibility and also failed to exercise his power merely on the pretext that the prayer made in the application was to initiate proceedings under contempt. In a nutshell, what was sought by the applicant wife was an action for breach of the interim orders and the Magistrate has clearly refused the same by merely observing that when the prayer made was seeking invocation of the contempt jurisdiction and

since the Magistrate was not vested with the power to punish for contempt, he refused to grant relief. The learned Appellate Court after going through the provisions in Chapter V of the Domestic Violence Act, has reiterated the findings of the Magistrate, which in my considered opinion, amounts to traversing of justice and defeating the provisions of the Domestic Violence Act.

9 For the aforesaid reasons, the impugned order passed by the Magistrate at Exhibit-B and the appellate order passed by the Addl. Sessions Judge at Exhibit-A are quashed and set aside.

10 In such circumstances, and in the backdrop of the peculiar facts, the said application filed by the applicant before the Magistrate at Exhibits 26, 28 and 35 should be treated by the Magistrate as a complaint under Section 31 and he is directed to proceed in terms of Section 31 and 32 of the Domestic Violence, Act, 2005 is directed to follow the procedure prescribed in Chapter V of the Domestic Violence Act 2005 along with Rule 15 of the Domestic Violence Rules 2006.

With these observations, Revision Applications are disposed of.

(SMT. BHARATI H. DANGRE, J.)

Manali
Prasanna
Tilak

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