

ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****WRIT PETITION NO. 2017 OF 2015**

Santosh Pralada Chipade
R/at - A/p Narhe, Tal- Haveli,
Dist – Pune 411041

.....Petitioner

V/s.

1. Seema Santosh Chipade
R/at – E – 1/401, Rajyog
Society, Nanded Phata, Tal-Haveli,
Dist – Pune 411041

2. The State of Maharashtra

....Respondents

Mr. Sanjay Bhojwani i/b Mr. S. B. Chaudhari for the petitioner.
Mr. S. S. Pednekar APP for the State.

CORAM : NITIN W. SAMBRE, J.**DATE : MARCH 19, 2018.****P.C.**

Heard. By an order dated 14/02/2014, Judicial Magistrate
First Class, Pune in Misc Application no. 0401913/2011 initiated on
20/09/2011 passed an order of protection under section 18 of the

Protection of Women from Domestic Violence Act, 2005 (Hereinafter referred to as 'DV Act' for the sake of brevity) in favour of the respondent. The learned Magistrate also granted order of payment of rent, payment of maintenance of Rs. 20,000/- to respondent no. 1 & Rs. 10,000/- each to respondent nos. 2 & 3 from the date of application under section 20 of the DV Act and compensation of Rs. 25,000/-. Said order was subject matter of challenge in appeal no. 152 of 2014 pursuant to the provisions of section 29 of the DV Act which came to be dismissed by the Judgment and Order passed by Additional Sessions Judge, Pune on 04/04/2015. Hence, this writ petition under Article 227 of the Constitution of India.

2 The facts necessary for deciding the present writ petition are as under:

Petitioner was married to respondent no. 1 on 14/05/2004 and were blessed with two sons, original applicant nos. 2 & 3. It is the case of the respondent that having accepted dowry of Rs. 3,00,000/-, the petitioner has practiced violence on the respondents

as he used to consume liquor and was in relationship with another girl. In the aforesaid background, proceedings under the DV Act came to be initiated. The court of Magistrate framed issues as regards the entitlement of the respondents for the relief claimed under the DV Act and proceeded to pass order of rent, protection, maintenance and compensation. In appeal, Appellate Court confirmed the finding vide impugned order dated 04/04/2015. Hence, this writ petition.

3 The learned counsel for the petitioner would urge that in absence of any evidence *qua* the second marriage of the petitioner and also as that of payment of alleged dowry/hand loan of Rs. 3,00,000/-, the findings recorded are not justifiable. It is further urged that in view of the evidence of respondent no. 1, the cause of action for initiation of the proceedings cannot be read in view of the provisions of the Statute. It is also claimed that the factual matrix reflects no domestic violence and as such, according to him, the impugned order is liable to be quashed and set aside. It is also urged that the claim put forth in the application about monthly income of

the petitioner is without any basis. It is urged that parallel proceedings initiated under section 125 of the Code of Criminal Procedure, 1973 which is also required to be considered.

4 *Per contra* the learned APP would urge that the orders impugned are based on pleadings and evidence brought on record and as such, no interference is warranted.

5 Having appreciated the submissions in the light of evidence recorded by both the courts below, it is required to be noted that both the courts below have taken note of the various events and incidents which are narrated and *prima facie* established by the respondents, *qua*, domestic violence practiced. It is also established that there are two children to the respondent born out of wedlock with the petitioner and it is bounden duty of the petitioner to maintain them. It is not in dispute that the petitioner is having battery manufacturing business which is his source of income. Income from the business of the petitioner is apparently taken into while determining the quantum of maintenance.

6 *Prima facie* findings are recorded by both the courts below that petitioner was in relationship with one Sonali and it is also brought on record that said Sonali has begotten a female child on 12/12/2013. Over all evidence of respondent's father namely Omprakash and pan card of said Sonali weighed before the courts below for framing and confirming an opinion against the petitioner which evidence is not demolished by the petitioner.

7 The petitioner herein has failed to demonstrate any legal infirmity or illegality as regards finding about source of income, quantum of income. In this background, both the courts below have proceeded to pass an order of payment of rent amount, protection order, maintenance order and compensation.

8 No substantial legal ground is established by the petitioner which warrants interference in extraordinary jurisdiction so as to cause interference in the impugned orders.

9 Keeping the issue *qua* adjustment of amount of maintenance in proceedings under section 125 of the Code of Criminal Procedure, 1973 and prayer for modification of the order, in case if the petitioner is in a position to demonstrate the reduction in his income before the court of the learned Magistrate open, the writ petition stands dismissed.

[NITIN W. SAMBRE, J.]