

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.387 OF 2017

Kaviraj Dattatray Muslonkar, Age 36 years,
R/o.Flat No.302, 3rd Floor, A-Wing,
Bawa Tower, Narayan Nagar, V.N.Purav Marg,
Sion, Chunabhatti, Mumbai-22.

Applicant

versus

1. Rachana Kaviraj Muslonkar,
C/o.502, Sukhkarta CHS Ltd;
Dattaram Lad Road, Kala Chowki, Mumbai.

2. The State of Maharashtra

Respondents

Mr.Arjun S. Kode with Ms.Archana Deshpande for applicant.
Mr.Hemant V. Kenjalkar for respondent no.1.
Ms.Neeta S. Jain, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 25th January 2018

PC :

1. The applicant has filed this revision application challenging the order dated 23rd June 2017 passed by Additional Sessions Judge in Criminal Appeal No.725 of 2016. The Sessions Court while partly allowing the appeal filed by respondent no.1, directed the applicant to pay Rs.10,000/- per month towards maintenance of his daughter from the date of application till disposal of the proceedings before the Trial Court and further directed to pay Rs.15,000/- per month towards rent to respondent no.1 from the date of application till disposal of the original proceedings before the Trial Court. The

Sessions Court also set aside the order dated 26th August 2016 passed by the Metropolitan Magistrate, 15th Court, Mazgaon, Mumbai in CC No.51/DV/2015.

2. The respondent no.1 has preferred an application bearing CC No.51/DV/2015 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'D.V.Act'). The said application was filed before the Court of Metropolitan Magistrate, 15th Court, at Mazgaon, Mumbai. The respondent no.1 also filed an application for interim maintenance u/s 23 of D.V.Act. The application for interim relief was rejected by the Trial Court vide order dated 26th August 2016. The said order was challenged by respondent no.1 before the Sessions Court by filing an appeal being Appeal No.725 of 2016. The appeal was allowed by the Sessions Court vide order dated 30th November 2016 and the applicant was directed to pay Rs.10,000/- per month towards maintenance to the daughter and Rs.10,000/- towards rent. The said order dated 30th November 2016 was challenged by the applicant before this Court by filing Criminal Revision Application No.50 of 2017. This Court allowed the said application by order dated 19th April 2017 by setting aside the order dated 30th November 2016. The Court remanded the appeal for fresh hearing and decision in accordance with the observations made in the said order. In pursuant to that, the impugned order dated 23rd June 2017 was passed by the Additional Sessions Judge directing payment of maintenance of Rs.10,000/- per month to the daughter and Rs.15,000/- per month towards rent.

3. Learned advocate for the applicant submits that the Sessions Court has erred in passing the impugned order. The order is contrary

to law and evidence on record. There was no reason to set aside the order of learned Magistrate. The Sessions Court has enhanced the maintenance amount after the appeal was remanded to the said Court. The findings of the Sessions Court in the impugned order are un-supported by any cogent evidence. The Sessions Court has failed to adjudicate the appeal in accordance with the order dated 19th April 2017 passed by this Court while remanding the appeal for fresh hearing. It is further submitted that the learned Magistrate has passed a well reasoned order justifying the rejection of application for interim maintenance. It is submitted that the respondent had failed to establish the charge of domestic violence which is a requisite to entertain the complaint under the provisions of D.V.Act. The Trial Court had analyzed the material on record and had passed the order refusing to grant maintenance on account of absence of any evidence to justify the said proceedings even at prima facie stage. It is submitted that the allegations made in the application u/s 12 of D.V.Act, were vague in nature and un-supported by any evidence. The medical certificates relied upon by respondent no.1, do not support the grievance of injuries sustained by her allegedly at the instance of applicant. It is submitted that the documents do not suggest that the injuries were caused by the applicant. The complaints which were treated as non-cognizable, were lodged belatedly. There is no domestic violence within the meaning of said term as defined under D.V.Act. The order passed by the Trial Court, therefore, does not require interference. It is further submitted that while remanding the appeal to the Sessions Court, this Court has observed that the Appellate Court is required to reconsider the relevant issues and record a finding of fact. The Appellate Court had based its findings on the basis of surmises and conjectures rather

than material available on record. The learned counsel for applicant pointed out several documents annexed to the application, which according to him, rules out a case for grant of any relief to respondent no.1. The respondent no.1 has not established case of domestic violence. It is further submitted that the Sessions Court had not given any cogent finding regarding domestic violence although the appeal was remanded back to Sessions Court by this Court. It is further submitted that the respondent no.1 is employed and she is earning more than Rs.1,00,000/- per month.

4. Learned counsel for respondent no.1 submitted that the Appellate Court has considered the grant of interim maintenance in the form of maintenance to the daughter as well as amount towards rent. It is submitted that the Trial Court had committed an error in refusing the maintenance after concluding that there is no domestic violence. It is submitted that the respondent no.1 had filed an application for interim relief; the Trial Court, however, proceeded to decide the application as if the Court was deciding it finally and had observed that there is no domestic violence. It is submitted that there is sufficient material to show prima facie that the respondent no.1 was subjected to violence which amounts to domestic violence within the provisions of D.V.Act. The observations of the Trial Court, however, are based on inference and excluding the material on record. It is further submitted that the respondent no.1 had referred to the harassment, mental torture, assault, which is sufficient to establish that prima facie case u/s 12 of D.V.Act is made out. The Trial Court has on the contrary analysed the averments made in the application negatively and committed an error in giving adverse findings before the respondent no.1 could adduce evidence while

prosecuting the said application. The Trial Court was required to see whether prima facie case was made out for grant of interim relief. It is submitted that the applicant has himself stated in the reply filed by him that he is incurring monetary expenses to the tune of Rs.82,033/- per month. Unless he has income, he will not be in a position to incur such a huge amount towards expenses. It is, therefore, submitted that the applicant himself has supported the case of respondent no.1 to show that the applicant is financially sound and appropriate monetary reliefs should be granted to the respondent no.1. It is further submitted that the complaints filed by the respondent no.1, which are part of the application u/s 12 of D.V.act, support the case of respondent no.1 with regards to violence meted out to her. It is, therefore, submitted that revision application may be rejected.

5. On perusal of documents it is apparent that the applicant and respondent no.1 are related to each other as husband and wife. The respondent no.1 filed an application u/s 12 of D.V.Act before the Trial Court. In the said application several assertions were made alleging domestic violence. Learned Magistrate vide order dated 26th August 2016 rejected the application filed by the respondent no.1. It was observed that the application does not disclose, prima facie, that domestic violence is committed by the applicant herein. The learned Magistrate has refused to grant any maintenance to respondent no.1. It was observed that the respondent no.1 has failed to satisfy that she was subjected to domestic violence. The said order was challenged before the Sessions Court by the respondent no.1 by filing an appeal. The said appeal was partly allowed with a direction to pay Rs.10,000/- per month towards maintenance to daughter and

Rs.10,000/- per month towards house rent. The Court directed the applicant-husband to pay Rs.10,000/- per month towards maintenance to daughter and Rs.10,000/- per month towards rent.

6. It is pertinent to note that vide order dated 19th April 2017 this Court had observed that the Sessions Court has mechanically passed the order dated 30th November 2016 without adhering to the material on record and the pleadings of the parties. The Sessions Court had merely recorded the submissions of the advocates for both the parties and concluded its findings about domestic violence. The Court has not looked into the documentary evidence adduced by the parties and that the order is totally perverse. Therefore, the appeal was remanded to the Appellate Court by setting aside the order dated 30th November 2016. In pursuant to that the order dated 23rd June 2017 was passed by the Sessions Court which is under challenge in the present revision application. In the impugned order the Sessions Court has observed that in view of discussion, the material in the form of pleadings and documents prima facie demonstrate that the respondent no.1 committed domestic violence. The incidents pointed out by wife are sufficient to demonstrate prima facie that the husband has committed the act of domestic violence. The Sessions Court has also observed that in reply filed by the applicant-husband, he has shown his expenditure to the tune of Rs.82,033/-. The Court, therefore, directed payment of Rs.10,000/- per month towards maintenance of daughter and Rs.15,000/- per month towards rent to respondent no.1 herein.

7. It appears that the Trial Court has made observations that there is no domestic violence. The wife-respondent no.1 herein is yet

to adduce her evidence. She has relied upon several documents which are required to be appreciated during the course of hearing of application u/s 12 of D.V.Act, which is yet to be adjudicated upon. The Trial Court had proceeded as if the Court was dealing with the case finally. The Sessions Court has also observed that there is material on record to prima facie establish the case of domestic violence. The learned Magistrate has committed an error in refusing the reliefs in entirety. The applicant had agreed to pay maintenance to the daughter. The applicant-husband had preferred an application under Section 91 of Cr.P.C calling upon the employer of respondent no.1-wife to produce document showing her appointment. The appointment letter was produced which shows her income. It is thereby contended by the applicant-husband that the wife is earning more than Rs.1,00,000/- per month. The respondent no.1 claimed rent for separate accommodation and contended that she has to pay Rs.30,000/- per month towards rent. She has not given any material in support of the said claim. There was no cogent evidence to determine income of the applicant-husband. The Court had drawn inference on the basis of reply filed by the applicant-husband stating his expenditure. The main proceedings are still pending in the Court and it would not be proper to adjudicate on rights and counter claims of both the parties at this stage. The observations made in this order are only for considering this application. The Trial Court shall deal with the application preferred by the respondent no.1 wife in accordance with law, without being influenced by earlier order or any observations made by Sessions Court or this Court. Both parties will be at liberty to adduce evidence in support of their rights/defences.

8. In the circumstances, I pass following order :

ORDER

(i) Criminal Revision Application No.387 of 2017 is partly allowed;

(ii) The impugned order dated 23rd June 2017 passed by Additional Sessions Judge, Greater Bombay in Criminal Appeal No.725 of 2016, is set aside to the extent of direction to pay Rs.15,000/- per month towards rent to respondent no.1 herein;

(iii) The direction to pay Rs.10,000/- per month towards maintenance of daughter Devyani is confirmed;

(iv) The application under the provisions of the Protection of Women from Domestic Violence Act, 2005 filed by respondent no.1 herein, shall be adjudicated upon by the Trial Court in accordance with law, without being influenced by the findings reflected in order dated 26th August 2016, the order passed by the Sessions Court and this Order;

(v) Criminal Revision Application No.387 of 2017 is disposed off.

(PRAKASH D. NAIK, J.)

MST