

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRI. APPELLATE JURISDICTION

WRIT PETITION NO.2915 OF 2018

Durgaprasad Radheshyam Gupt
husband of the original complainant .. Petitioner
Versus
Mrs. Priti Durgaprasad Gupt & Anr. .. Respondents

Mr. P.S.Tembhekar for petitioner
Mr. D.K.Gupta for respondent No.1

CORAM : M.S.SONAK, J.

DATE : 26th November 2018.

ORAL JUDGEMENT:

Heard Mr. Tembhekar, learned Counsel for petitioner.
The challenge in this petition is to the order passed on 26th March 2018 by the learned trial Judge ordering the petitioner to pay to the respondent interim maintenance at Rs.7,000/- per month.

2] Mr. Tembhekar learned Counsel for the petitioner submits that the respondent had filed a police complaint against the petitioner making certain false allegations. The parties were referred to counselling and ultimately, the petitioner, in the police

station gave a statement that she has no objection to her complaint being filed and that she also has no objection to getting divorce by mutual consent.

3] This statement made by the respondent is at page 48 of this petition.

4] Mr. Tembhekar further submits that despite the aforesaid, the respondent on the basis of very same allegations, has made an application seeking maintenance. He submits that in view of the statement given by the respondent before the police authorities, the respondent is estopped from filing any application seeking maintenance.

5] Mr. Tembhekar submits that the respondent has indulged into inconsistencies. In one set of proceedings she has made one set of allegations and in other set of proceedings, she has made some other allegations. Mr. Tembhekar submits that in such circumstances, the learned trial Judge exceeded the jurisdiction in making an order for interim maintenance.

6] Mr. Tembhekar submits that presently the petitioner is unemployed. He submits that the respondent is well qualified and the statement that she is unable to maintain herself has never been substantiated.

7] Upon due consideration of the aforesaid submissions and after perusal of the material on record, I do not think that this is a fit case to warrant interference in the exercise of extra ordinary jurisdiction under Article 227 of the Constitution of India.

8] The statement given by the respondent before the police authority can certainly not constitute an estoppel or bar to the institution of proceedings seeking maintenance. From a perusal of the statement it is seen that the respondent has neither given up her claim for maintenance nor any other matrimonial rights. The statement at the highest indicates that the petitioner shall not be averse to the complaint being filed by the police authorities.

9] On the aspect of so called inconsistent statements made

by the respondent, there is absolutely no substantiation. In any case, as observed by the learned Trial Judge at the stage of considering an application for interim maintenance, detailed investigation is really not warranted. The basic facts on record indicate that the petitioner was married to the respondent. The petitioner is not contributing any amount towards maintenance of respondent. There is no material on record to suggest that the respondent has voluntarily abandoned the matrimonial home. The petitioner was admittedly employed and if as he claims he has now given up the job or lost the job, that by itself can be no ground to shirk the liability for payment of maintenance amount.

10] Accordingly, there is no reason to interfere with the impugned order. This petition is, therefore, dismissed. There shall be no order as to costs.

11] However, it is clarified that the observations in the impugned order or for that matter the present order are only prima facie in nature and the learned Trial Judge need not be influenced by such observations whilst deciding the issue of maintenance

finally. All contentions of both parties are expressly kept open.

(M.S.SONAK, J.)