

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3110 OF 2017

1. Mrs.Sindhu Sunny Motiani, Age 33 years,
Occ.Housewife, Ghodbunder Road,
Thane West.

2. Miss Pratibha Sunny Motiani, Age 3 years,
Being Minor, Ghodbunder Road,
Thane West.

Petitioners

versus

1. The State of Maharashtra.

2. Sunny Lacchmandas Motiani, Age 33 years,
Off.Service, R/o.1202, Petunia Building,
Everest Countryside, Near Speed Post,
Kasarwadavali, Thane.

3. Mrs.Kalpna Lacchmandas Motiani, Age 59,
Occ.Service, R/o.1202, Petunia Building,
Everest Countryside, Near Speed Post,
Kasarwadavali, Thane.

4. Lacchmandas Durgads Motiani, Age 63,
Occ.Agency, R/o.1202, Petunia Building,
Everest Countryside, Near Speed Post,
Kasarwadavali, Thane.

Respondents

Mr.Vivek Joshi for petitioners.

Ms.Anusha Pravin Amin for respondent nos.2 to 4.

Mr.A.R.Patil, Additional Public Prosecutor, for respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 6th August 2018

PC :

1. The petitioners have challenged the judgment and order passed by District Judge-6 and Additional Sessions Judge, Thane dated 19th April 2018 in Criminal PWDVA Appeal No.102 of 2016 directing the respondents to pay Rs.15,000/- from the date of order. The learned Judicial Magistrate, First Class, 2nd Court, Thane by order dated 3rd September 2016 had directed the respondent no.2 to pay Rs.15,000/- per month towards maintenance to both the petitioners from the date of application.

2. The petitioners had preferred an application before the Court of JMFC, Thane u/s 12 of Protection of Women from Domestic Violence Act, 2005 ('D.V.Act') seeking several reliefs on 16th September 2015. The petitioner no.1 is the legally wedded wife of respondent no.2. The marriage was solemnized on 27th January 2013. Petitioner no.2 is the daughter of petitioner no.1 and respondent no.2. Respondent nos.3 and 4 are the mother-in-law and father-in-law of petitioner no.1.

3. The petitioner no.2 is three year old minor daughter who is crippled child and requires special care and needs. Respondent no.2 filed divorce petition on 30th July 2015. Petitioner no.1 had initiated prosecution u/s 498A of Indian Penal Code on 19th August 2015. Subsequently application u/s 12 of D.V.Act referred to hereinabove was preferred on 16th September 2015. The petitioner no.1 had mentioned several instances of domestic violence in the application filed under D.V.Act. She preferred application vide Exhibit-5 (OMA No.136 of 2015) and applied for interim maintenance. The learned

Magistrate by order dated 3rd September 2016 allowed the said application and directed the respondent no.2 to pay maintenance from the date of application. The respondent no.2 had preferred an appeal against the order dated 3rd September 2016. The Appellate Court by order dated 19th April 2017 partly allowed the appeal. The order was modified making it effective from the date of order.

4. Learned counsel for petitioner submitted that the Appellate Court has committed an error in passing the impugned order. Learned Magistrate had considered all the relevant aspects of the matter and directed the respondent no.2 to pay maintenance from the date of application. There was no reason to interfere in the said order. It is further submitted that although respondent no.2 contended before both the Courts below that his bona fides be taken into consideration, he had issued the communication to the landlord by stating that he is not occupying the rental premises but he was paying rent. There is dispute between him and his wife and he has been directed to pay maintenance to wife. The landlord was requested to seek and demand peaceful and vacant possession of rental flat from the petitioners. It was also stated that in case his wife is willing to reside in the flat on leave and license basis, he may execute fresh agreement with her and in case she refuses to hand over possession of flat, the landlord can initiate appropriate action. It is submitted that petitioner no.1 is required to look after petitioner no.2. The petitioner no.1 could not join any employment as she has to look after the child. It is submitted that the Trial Court had granted maintenance taking into consideration the circumstances and the amount of Rs.15,000/- per month awarded by the Trial Court was towards interim maintenance from the date of application.

The main proceedings are still pending in the Trial Court. It is submitted that the Trial Court has assigned cogent reasons which are reflected in paragraph 6 of the said order. The Appellate Court has committed error and passed the impugned order contrary to law. Although the Court is required to pass a specific order for grant of maintenance from the date of application, it is not necessary to assign detailed reasons for passing such order. It is submitted that the Trial Court has in fact assigned reasons for passing the said order which ought not to have been disturbed by the Appellate Court.

5. Per contra, learned counsel for respondent nos.2 to 4 submitted that the Appellate Court has taken into consideration the bona fides of respondent no.2 while passing the order directing payment of maintenance from the date of order. It is submitted that respondent no.2 had made payment of rental amount regularly since last two years. He had renewed the leave and license agreement so that the petitioners shall not be shelter-less. He was willingly depositing the amount of Rs.3,000/- to Rs.4,000/- per month in the account of petitioner no.1. He has also opened recurring deposit account in the name of petitioner no.2 and depositing Rs.1,000/- per month. He was also paying cash. It is submitted that the Appellate Court while passing the order has observed that respondent no.2 has shown his bona fides even before any order is passed by the concerned Court. He had deposited some amount towards maintenance or renewal of leave and license agreement. From the act of husband it is reflected that he has not only shown his bona fides of paying the amount but has made his conduct clear that he is ready and willing to maintain the petitioners herein even before the order is passed. Learned counsel also submitted that to show his

bona fides in accordance with order dated 8th December 2017, the respondent no.2 has deposited a sum of Rs.1,74,500/- before the Trial Court towards interim maintenance from the date of application up to the date of order of Trial Court and 50% of the amount was allowed to be withdrawn by petitioner no.1 by this Court. Learned counsel thus submitted that there is no reason to set aside the order of Sessions Court. The evidence is yet to be recorded and the Trial Court would decide the issues finally at the conclusion of proceedings.

6. Having heard both sides and going through the documents on record it is apparent that the petitioners had preferred application u/s 12 of D.V.Act seeking several reliefs. Thereafter an application for interim maintenance was preferred. The Trial Court has allowed the said application and directed the respondent no.2 to pay maintenance from the date of application. It is the settled law that the Court is required to be specific in passing such order but it is not necessary to give detailed reasons for awarding maintenance from the date of application. It is noted that the petitioner no.2 is crippled minor child who is required to be looked after constantly. Learned Magistrate in paragraph 6 of the order dated 3rd September 2016 has observed that from the tenor of the application, coupled with the documents on record, it is apparent that the petitioner no.1 was initially working in a call centre getting fixed salary of Rs.10,000/- per month from December-2013. However, undisputedly after birth of petitioner no.2, she is jobless. It is admitted position that after separation from the parents till the alleged desertion, the petitioners were residing in a rented premises. Presently petitioners are staying in the said premises. It was also observed that no prudent lady who

is otherwise highly qualified having past job experience, getting salary, would sit idle, just to siphon off maintenance from her husband. When viewed from such perception coupled with circumstances showing requirement of personal care of crippled child by petitioner no.1, it cannot be inferred that she is deliberately avoiding employment. It is also observed that respondent no.2 had intermittently deposited the amounts towards medication expenses of the child and towards rent, however, the circumstances demand that respondent no.2 is required to pay maintenance to the tune of Rs.15,000/- per month. The Magistrate therefore observed that taking into consideration the admitted relationship and the need for medication of crippled child, the respondent no.2 cannot shun away from his responsibility to pay that much interim maintenance. The Court thereupon passed the order dated 3rd September 2016.

7. In appeal, the Sessions Court maintained the order of maintenance but directed it to be paid from the date of order. In paragraph 6 of the impugned order the Sessions Court has observed that the Magistrate has not given proper reasoning as to why he has not considered the bona fides shown by the respondents while granting interim maintenance. From that angle the order is perverse and deserves interference. So far as amount of maintenance is concerned, that does not require any change in view of admitted facts and particularly considering the ailment of petitioner no.2 and the medical expenses which are required to be incurred. The Court further observed that the Trial Court had passed the order without considering the conduct of respondents and to that extent the order is perverse and against the principles of natural justice.

8. From the order passed by the Trial Court I find that the Court has taken into consideration all the relevant aspects and directed the respondent no.2 to pay maintenance from the date of application. It is pertinent to note that petitioner no.1 is jobless and petitioner no.2 is crippled minor child who is required to be looked after by petitioner no.1. It is necessary to note that the Trial Court has given cogent reasons for directing payment of maintenance from the date of application. The Trial Court took into consideration the say filed by respondents. The Court also noted the entries in the account of respondent no.1 showing payment of rent to the lessor and other sums to the credit of petitioner no.1. The Trial Court observed that petitioner no.1 is presently jobless and alone had to take care of her crippled baby. Neither the payment of rent nor other sums intermittently deposited by respondent no.1 can be capitalized nor the bona fides can be considered at this juncture. Apart from that assertions and admissions regarding payments are implicit of his financial standing to pay maintenance of Rs.15,000/- per month. In spite of these observations the Appellate Court has opined that there are no reasons assigned by Trial Court and termed the order as perverse. In the light of the reasons for which the order was passed by the Trial Court, I do not find that there was any infirmity and the Appellate Court ought not to have modified the said order by directing maintenance from the date of application. The D.V.Act is a legislation to provide effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for the matters connected therewith or incidental thereto. The order of Appellate Court is in conflict with the settled law. The Court while deciding the application for maintenance is required to assign reasons for refusing

the maintenance. However, such maintenance can be awarded from the date of application for which no detailed reasons are required to be assigned. In this case, however, the Trial Court has taken into consideration the contentions of respondent no.2 and passed the order. Taking into consideration all the aforesaid circumstances and material on record, the Appellate Court could not have modified the order of Trial Court. Hence, I pass following order :

ORDER

- (i) Writ Petition No.3110 of 2017 is allowed;
- (ii) Impugned order dated 19th April 2017 passed by District Judge-6 and Additional Sessions Judge, Thane below Exhibit-13 in PWDVA Appeal No.102 of 2016 is set aside;
- (iii) The amount of maintenance deposited by respondent no.2 towards arrears of maintenance in accordance with the order dated 8th December 2017 is allowed to be withdrawn by petitioner no.1;
- (iv) Writ Petition is disposed off.

(PRAKASH D. NAIK, J.)

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