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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITIOIN NO.4342 OF 2014

Ms. Sonali Anurag Kataria

..Petitioner

Vs

Anurag Suresh Kataria & Ors

.Respondents

Mr. Hitesh Vyas for petitioner.

Mr. Shantano Raktate for respondent Nos.1 and 2.

Mr. A.R. Patil, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 17th September 2018.

P.C.:

1] By the present petition under Article 227 of the Constitution of India, the petitioner/wife has impugned the Judgment and Order dated 20.9.2014 passed by the learned Additional Sessions Judge, Pune in Criminal Appeal No.147 of 2013 thereby setting aside the Judgment and Order dated 8.2.2013 passed by the Judicial Magistrate First Class (A.C.) Court Pune in Criminal Misc. Application No.575 of 2010 filed under Section 12 of the Protection of Womens from Domestic Violence Act (for short 'the said Act')

2] Heard Shri Vyas, the learned Counsel for the petitioner, Shri Raktate, the learned counsel for the respondent Nos.1 and 2 and the

learned APP. Perused the record.

3] The petitioner is wife of the respondent No.1. It is an admitted fact on record that, the marriage between the petitioner and the respondent No.1 was solemnised on 30.6.2005 and thereafter they resided together till November 2008. Since 2008, the petitioner is residing at the address mentioned in the cause title of the petition. The petitioner filed the said application under section 12 of the said Act on various grounds and prayed for monthly maintenance and directions against the respondent No.1, prohibiting him from causing domestic violence upon the petitioner. The record indicates that, the petitioner and the respondent No.1 lead evidence in respect of their financial conditions and were granted liberty to cross-examine necessary witnesses at length by the Trial Court. The learned Judicial Magistrate First Class, Pune, after hearing the parties to the said application was pleased to pass the Judgment and Order dated 8.2.2013 thereby granting following reliefs:

“1] The application is partly allowed.

2] The respondents are prohibited from committing any act of domestic violence upon the applicant.

3] The respondent No.1 is directed to pay Rs.20,000/- p.m as a monetary relief in the form of maintenance to the applicant from the date of this Order.

4] Respondent No.1 is further directed to pay the property tax of the flat No.1, Mohan Kunj, Amar Co.Op.Hsg. Society, behind S.N.D.T. College, Law College Road, Pune as claimed”.

4] The respondent Nos.1 and 2 being aggrieved by the said Judgment and Order dated 8.2.2013, preferred Criminal Appeal bearing No.147 of 2013 in the Court of Sessions at Pune. The learned Additional Sessions Judge by its Judgment and Order dated 20.9.2014 was pleased to allow the said appeal and set aside the Judgment and Order dated 8.2.2013 passed by the Judicial Magistrate First Class, Pune.

5] The record clearly indicates that, the petitioner was granted interim relief under section 23 of the said Act by the learned Judicial Magistrate First Class, Pune by its Order dated 28.12.2010 below Exh. 25 in Criminal Misc. Application No.575 of 2010 and the respondent No.1 was directed to pay Rs.10,000/- p.m to her as a maintenance. It is a further admitted fact on record that, the petitioner was earlier working and was receiving salary of Rs.15,000/- per month. However, due to matrimonial discord, she had left the said job and on the date of filing of application she was not earning. The petitioner has specifically pleaded that, the respondent No.1 was getting an amount of Rs.7,15,000/- per annum from his employer and the said fact has been categorically admitted by the

respondent No.1 in his cross-examination. The respondent No.1 in his testimony has further admitted that, he used to pay Rs.25,000/- per month to the petitioner towards her maintenance when they were residing together. After taking into consideration the said facts, the Trial Court granted maintenance of Rs.20,000/- per month from the date of Order i.e 8.2.2013 to the petitioner.

6] The Appellate Court in the impugned Judgment and Order dated 20.9.2014 in para-6 has recorded a finding that, the statement of the petitioner that, she was getting interim maintenance of Rs.10,000/- is a false statement. The said finding as recorded is ex-facie contrary to the record and in view of the Order dated 28.12.2010 passed by the learned Judicial Magistrate First Class, Pune under section 23 of the said Act. It further appears from the record that, the Appellate Court has given undue weightage to the minor discrepancy in the evidence of the petitioner and has given benefit of it to the respondent No.1. As noted earlier, the petitioner was not earning anything on the date of filing of application and the said situation persisted during the filing of appeal too.

7] The record clearly indicates that, the Appellate Court apart from aforesaid incorrect finding has proceeded on conjunctures and surmises for

setting aside the impugned Judgment and Order dated 8.2.2013 passed by the learned Judicial Magistrate First Class. The evidence on record clearly supports the finding recorded by the Judicial Magistrate First Class, Pune. As noted earlier, the respondent No.1 has given vital admissions in his testimony which undoubtedly goes to the root of the matter.

8] After taking into consideration the aforesaid facts on record, this Court is of the considered view that, the respondent No.1 was and is having capacity and/or sufficient income to pay the maintenance of Rs.20,000/- per month to the petitioner. After perusing the record, this Court is of the view that the Judgment and Order dated 8.2.2013 passed by the learned Judicial Magistrate First Class, Pune is just and proper and does not suffer from any error either in law or on facts.

9] In view thereof, the impugned Judgment and Order dated 20.9.2014 passed by the learned Additional Sessions Judge, Pune in Criminal Appeal No.147 of 2013 requires interference by this Court in its writ jurisdiction under Article 227 of the Constitution of India and is accordingly quashed and set aside.

Writ Petition is allowed in terms of prayer clause (a).

(A.S.GADKARI, J.)

Anil
Chandrakant
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by Anil
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2018.10.06
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