

Anand

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

CRIMINAL APPLICATION NO. 1156 OF 2014

Smt. Asawari Ninad Supekar .Applicant

Vs.

Shri Ninad Ratnakar Supekar & ors. .Respondents

Ms V. U. Kabare, Advocate, for the Applicant

Mr. S. R. Shinde, APP, for the Respondent No. 5 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 19.01.2018

P.C.

. By this Application, the Applicant has impugned the Order dated 07.10.2014 passed by the learned Additional Sessions Judge, Pune in Cri. Appeal No. 379 of 2014, by which the learned Sessions Judge was pleased to quash the order of issue process dated 24.07.2014 passed under Section 31 of the Protection of Women from Domestic Violence Act, 2005 (for short “D. V.” Act) in Complaint Case No. 157 / 2014, as against the Respondents and as such, was pleased to dismiss the said complaint.

2. Heard learned counsel for the Applicant.

3. Learned counsel for the Applicant submitted that the learned Sessions Judge had erred in law by setting aside the order of issue process dated 24.07.2014. She submitted that the documents issued under the R. T. I. by E. S. I. C. were not in its proper form and that the said documents do not bear the stamp of the E. S. I. C. office, name and designation of the Public Information Officer. She relied on the documents which are at page Nos. 113 to 127 in support of her submissions. She submitted that the Respondents had breached the Order dated 23.10.2012 passed by the learned Judicial Magistrate First Class, Cantonment Court, Pune in particular, Clause (1) of the said order by entering the place where the Applicant was employed. She relied on several provisions of the D. V. Act in support of her submissions, in particular, Section 31 of the D. V. Act which provides for penalty for breach of the protection order. Learned counsel has also tendered written submissions / arguments. The said written submissions / arguments are taken on record. She submitted that ESIC Branch Managers while disclosing the Applicant's personal information allegedly under the R. T. I. Act, ought to have given notice to the Applicant, before supplying copies of her salary slips, to the Respondents. According to the learned counsel, copies of the Applicant's salary slips were obtained by the Respondents by illegally

entering the Applicant's place of work and in breach of the Order dated 23.10.2012.

4. None appears for the Respondents. The Respondent No. 1 has filed his Affidavit-in-reply on behalf of Respondent Nos. 1 to 4. The said Affidavit is at page No. 133 of the Application. According to the Respondents, that had filed an Application of the RTI Act, with the E. S. I. Corporation, for getting information whether the Applicant was working there in her maiden name and suppressed the same in her D. V. Complaint i. e. 174 / 2012, to get maintenance.

5. Perused the papers as well as the impugned order. The Respondent No. 1 is the husband of Applicant and the Respondent Nos. 2 & 3 are the in-laws and the Respondent No. 4 is the sister-in-law of the Applicant. The Applicant had filed a complaint / application i. e. M. A. No. 173 / 2012 in the Court of the learned Judicial Magistrate First Class, Cantonment Court, Pune and had sought protection, maintenance and other reliefs under the D. V. Act. The Applicant had also sought interim reliefs. The learned Magistrate vide Order dated 23.10.2012, without going into the merits of the Application and the say, granted interim relief under Section 18 of the D. V. Act. The said order

was passed by the learned Magistrate below Exhs. 1 & 15. The operative part of the order reads thus :-

“ 1) The respondents are restrained from entering the place of employment of the applicant. They are also restrained from attempting to communicate in any form, whatsoever, with the applicant, including personal, oral or written or electronic or telephonic contact till further orders or till decision of the interim application whichever is earlier.

2) The Protection Officer to get implemented this order by resorting to appropriate measures.

3) Copy of this order be given to both the parties free of cost.”

6. It appears that the Respondent No. 2 i. e. father-in-law of the Applicant had filed an Application under the Right to Information Act (hereinafter referred to as “R. T. I.” Act) and had sought information, with regard to the Applicant's salary and bonus, from the E.S.I. Corporation. According to the Respondents, pursuant to the said Application filed under the R. T. I. Act, the Respondents received details of the Applicant's salary.

7. At the outset, it is made clear that in the facts of this case, it is not necessary to go into the details; i. e. whether the information

provided under the R. T. I. Act could have been provided by the E. S. I. Corporation or not; and whether the documents received by the Respondents are genuine. The only question to be considered in this Application is, whether the learned Sessions Judge had erred in quashing the order of issue process dated 24.07.2014 passed by the learned Judicial Magistrate First Class, Cantonment Court, Pune in Complaint Case No. 157 / 2014 and whether the Respondents had breached the Order dated 23.10.2012, warranting the learned Magistrate to issue process against the Respondents.

8. The Applicant had filed a private complaint, being Complaint Case No. 157 / 2014 alleging an offence punishable under Section 31 of the D. V. Act as against the Respondents, pursuant to which, the learned Magistrate was pleased to issue process as against the Respondents. The said order of issue process was challenged by the Respondents in Appeal. The Appellate Court after considering the material on record observed in para 9 as under :-

“ 9] As matter of fact, accused no. 2 moved his application to the office of ESIC under the Right to Information Act and obtained copies of the salary slips of the complainant. If those copies are supplied to accused no.2 for being produced in the Family Court, and the Court of J.M.F.C. Cantonment, Pune, it cannot be said

that accused no. 2 has entered in the office of the complainant unlawfully and committed breach of said protection order dated 23.10.2012. So it is manifest that there is no prima facie case to show that accused persons have committed breach of protection order dated 23.10.2012 passed against them in the complainant's earlier proceeding – M. A. NO. 173/2012. The process for the said offence ought not to have issued against accused nos. 1 to 4 unless the said exercise was made. Hence, I record my finding on point no. 1 in the negative as above.”

9. It appears that the Applicant was working with EXL Services.com (India) Private Limited whereas, the Respondents had gone to the E. S. I. Corporation' s office, to get the information. According to the learned counsel for the Applicant, the Respondents had committed a breach of the Order dated 23.10.2012 passed by the learned Magistrate, by entering the Applicant's place of employment. Admittedly, the place where the Applicant was working was not the place where the Respondents had gone and sought information under the R. T. I. Act..

The impugned Order dated 07.10.2014 passed by the learned Additional Sessions Judge, Pune in Cri. Appeal No. 379 of 2014 can neither be said to be perverse nor unsustainable, warranting

interference in writ jurisdiction.

10. Accordingly, the Application is dismissed.

(REVATI MOHITE DERE, J.)