

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

WRIT PETITION NO.4695 OF 2017

Hardeep Singh Arora
Age 40 years, Occ: Service,
Having permanent address at:A/2
Rupal Flats,
Near Saint Xaviers High School,
Memnagar,
Ahmedabad-380052.
Presently office/contact address at:
51 Changi Busines Park Central
2,#07-09 The Signature, Singapore
486066.

...Petitioner

Versus

1. The State of Maharashtra
2. Government of India.
(Immigration Authority)
3. Mrs. Amardeep Hardeepsingh
Arora
Age 36 years, Occ.: Service,
Presently residing at-Lok Terrace Co-
op Society, D/114, Section-17, Plot
No.16, Vashi, Navi Mumbai.

...Respondents

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Mr. Pradeep Chavan i/b. M/s. Pradeep Chavan and Associates for the
Petitioner.

Mrs. Ameeta Kuttikrishnan for the Respondent No.2.

Mr. Sanskar Marathe i/b. Mr. H. & M. Legal for the Respondent No.3.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

JUDGMENT RESERVED ON : 20/11/2017

JUDGMENT PRONOUNCED ON:12/1/2018

JUDGMENT:-

The challenge in this petition is to the order dated 8th October, 2015 in Criminal Complaint No.OMA/205/2015 whereby the learned Judicial Magistrate, First Class, Belapur, has ordered service of summons through the Immigration Authority of India and issued directions to the Immigration Authority not to permit the Petitioner herein to leave India without permission of the Court.

2. The Petitioner is the husband of the Respondent No.3. They were married on 5.12.2002 and have two minor children from the said wedlock. The Petitioner is working in Singapore since May-2008. The Respondent No.3 had also joined him at Singapore. However, she returned to India in the year 2011. It appears that there was a matrimonial dispute between the Petitioner and the Respondent No.3. As a result thereof, the Respondent No.3 did not return to Singapore and started residing with her parents alongwith her two children.

3. The Respondent No.3 filed an application under Section 12 of the Protection of Women from Domestic Violence Act (for short 'DV' Act) before the learned Judicial Magistrate, First Class, Belapur,

against the Petitioner, his parents and other family members, seeking protection order, residence order as well as monetary relief for herself and the two minor children.

4. The Respondent No.3 filed an application dated 8th October, 2015 stating that the Petitioner herein comes to India on 2nd and 4th Saturday of the Month during morning hours and that he leaves the Country on Sunday Night. The Respondent No.3 claimed that since the Petitioner was coming to India when the Courts are closed it is not possible to serve the notice on him while he is in India. The Respondent No.3 further claimed that the proceedings were likely to be delayed and her rights and benefits would be frustrated. She therefore, prayed that the Immigration Authority should be directed not to allow the Petitioner to leave the country without the permission of the Court.

5. Based on the averments made in the said application, the learned Magistrate directed that the notice should be served through the Immigration Authority apart from other modes such as E-mail, through authorised courier service and by speed post. The learned Judge also directed the Immigration Authority not to allow the

Petitioner to leave the country without permission of the Court. Being aggrieved by this order the Petitioner has filed this Petition.

6. During the pendency of this Petition, the Petitioner and the Respondent No.3 have arrived at an interim arrangement pending the hearing and final disposal of the interim application of the DV Act. They have placed on record the consent terms, which read as under :

“(1) It is agreed between the Petitioner and the Respondent No.3 that by way of interim maintenance to the children of the Petitioner and the Respondent No.3, namely Ms Romansha and Master Tanish, the Respondent No.3 will open a joint account in the name of the two children, in a nationalize bank, and give details of the same to the Petitioner.

2. It is agreed between the petitioner and Respondent No.3 that they will deposit an amount of Rs.20,000/- (Rupees Twenty Thousand only) each, every month, in the said account towards the expenses of the said children from the date of signing of this consent terms.

3. It is agreed that the Petitioner-father in addition to

Rs.20,000/- per month as mentioned above, shall also incur the education expenses of both the children. It is agreed that the said amount of education expenses will be paid directly to the school by way of internet banking. The Respondent No.3 shall take necessary fee receipts from the school and share the same with Petitioner.

4. It is agreed by the Respondent No.3-mother that she will utilize the said amount only towards the expenses of the children and the monthly accounts of the children shall be shared with the Petitioner.

5. It is agreed that the above arrangement is pending the final outcome of the interim maintenance application and without prejudice to rights and contentions of both, the Petitioner and Respondent No.3 before the Ld. Trial Court.”

7. The said terms are signed by the respective parties and their counsels. The terms are agreeable to the parties and are taken on record and marked Exhibit-'X'. The undertaking given in the said terms are accepted.

8. Now coming to the merits, the main challenge in the petition is to the Restrictions on the right to travel abroad. The learned counsel for the Petitioner submits that the directions issued to the Immigration Authority to prevent the Petitioner from leaving the country are totally arbitrary and are in contravention of the settled principles of law. He has submitted that on receipt of the notice sent by courier, the Petitioner had put in his appearance, filed his reply and attended all further hearings either personally or through his Advocate. He has further submitted that the matter was referred for mediation and that the Petitioner had personally attended the mediation proceedings on 6.11.2017. The learned counsel for the Petitioner submits that the impugned order was never served upon the Petitioner. On 6.11.2017, when the Petitioner had come to India to see his ailing mother he was detained by the Immigration Authority at Chatrapati Shivaji International Airport, Mumbai and he was informed that a lookout circular was issued against him as per the order of the learned J.M.F.C., Belapur. The Petitioner, filed an application dated 9th November, 2017 before the learned Magistrate, seeking to recall or vacate the said order. However, the learned Magistrate refused to entertain the said application. Drawing my attention to the averments

made in paragraph 25 of the application under Section 12 of the DV Act, Mr. Pradeep Chavan, the learned counsel for the Petitioner has submitted that the Respondent No.3 had deliberately made a false statement in the application dated 8th October, 2015 as regards his frequent visits to India. He has submitted that by making such false statement, the Respondent No.3 tried to create an impression that the Petitioner was avoiding service or process of the Court.

9. The question for consideration in this writ petition is whether the petitioner, who is a Respondent in DV proceedings could be prevented from travelling abroad. In *Maneka Gandhi v/s Union of India [1978 (1) SCC 248]* the Apex Court has held that personal liberty within the meaning of Article 21 of the Constitution includes within its ambit, a right to go abroad. No person, including an accused, can be deprived of this right except in accordance with the procedure established by law. Nevertheless, this right is not absolute and the court can curtail the right of an accused to travel abroad for valid reasons, for instance to secure presence of a proclaimed offenders, to facilitate court proceedings and or to secure presence of those persons who are evading their presence in the course of judicial trial. Suffice to say that while curbing the right of an accused to travel abroad, the

court has to look into the entire gamut of the facts and circumstances of the case, the gravity of the crime and weigh the balance of requirement or the presence of the accused during course of trial, likelihood of his return etc. Thus, depending on the facts of the case, the court, for valid reasons, may curb such right of an accused or may grant permission on imposing conditions deem fit to secure his presence.

10. In the instant case, the Petitioner is not involved in any criminal case and his presence was not required for investigation. He is not an antisocial element with criminal antecedents, who was likely to flee from the country to evade arrest or prosecution. He had also not flouted any order of the Court as to warrant such action. The Petitioner is a Respondent in proceedings under Section 12 of the DV Act wherein the Respondent No.3 has sought protection and residence orders and monetary relief under Section 18, 19 and 20 of the DV Act. The Domestic Violence Act, as can be seen from Clause 3 of Statement of Objects and Reasons of the DV Act, was enacted to provide a remedy under the civil law, which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. It is further to be noted that none of the

provisions of the DV Act, except Sections 31 and 33 are penal in nature. The DV Act therefore cannot be said to be a penal statute and the proceedings under the DV Act do not partake character of criminal proceedings. The Petitioner, who is a Respondent in DV proceedings and not being an offender or an accused in a crime, his right to travel abroad could not have been abridged solely due to filing of or pendency of proceedings under the DV Act.

11. It is also pertinent to note that in the application under Section 12 of the DV Act the Respondent No.3 had claimed that the Petitioner visits Ahmedabad and Mumbai once in every six or seven months and this fact can be verified from the passport. Whereas in the application 8th October, 2015, which is supported by an affidavit, the Respondent No.3 had stated that the Petitioner visits India on every 2nd and 4th Saturday and leaves on Sunday and hence it is not possible to serve the notice personally. The travel documents of the Petitioner clearly indicates that the statement made by the Respondent No.3 in the application dated 8th October, 2015 regarding his travel to India are incorrect and were apparently made to mislead the court to believe that the Petitioner was avoiding the process of Court. Suffice it to say, making a false statement under oath or affirmation in the course

of a judicial proceeding tends to obstruct the due course of justice and a person making false statement renders himself liable for perjury as well as action under Contempt of Court Act.

12. The records further reveal that upon receipt of the notice sent by courier, the petitioner had put in his appearance at the first hearing. He had filed his reply, and attended all subsequent hearings either personally or through his lawyer. Yet he was not made aware of the directions given to the Immigration Authority. It appears that the impugned order dated 8th October, 2015 was forwarded to the Immigration Authority and coercive action was taken against the petitioner only after the failure of the mediation proceedings.

13. The records thus clearly indicate that the Respondent No.3 had obtained the order by making false and misleading statements and used the judicial proceedings to wreck the personal vengeance. This is nothing but sheer abuse of process of court. The conduct of the Respondent No.3 in making a false statement and using the judicial proceeding to settle her personal scores needs to be deprecated. However, considering that the Respondent No.3 has tendered oral as well as written unconditional apology and given an assurance not to

repeat such acts, I do not wish to stretch the issue any further.

14. The records reveal that the learned Magistrate had passed the impugned order mechanically and casually on an unfounded apprehension that the Petitioner is likely to delay the proceedings. It is also to be noted that the petitioner was not heard in the matter before passing such drastic order. Furthermore, having violated the most valuable rights of the petitioner to travel abroad and earn his livelihood, the learned magistrate has observed that the impugned order would not prejudice the petitioner. The order reflects total non application of mind and being arbitrary and illegal cannot be sustained.

15. The learned counsel for the Petitioner has also questioned issuance of notice through the Immigration Authority. It is seen that the Magistrate had ordered service of notice through the Immigration Authority as well as by E-mail, authorised courier service and speed post. Pursuant to the said order, notice was dispatched to the Petitioner through courier service and he has been duly served with the notice. Thus the direction to serve the notice through the Immigration Authority has rendered otiose. Nevertheless, it would be relevant to

mention here that the notice under Section 13 of the DV Act has to be served in one of the modes prescribed under Sub Rule 2 of Rule 12 of the Domestic Violence Rules, 2006.

16. For the reasons stated above, the writ petition is allowed. The directions given to the Immigration Authority not to permit the Petitioner to leave India without prior permission of the court is quashed and set aside.

(ANUJA PRABHUDESSAI, J.)