

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1108 OF 2017
IN
CRIMINAL APPLICATION NO.1004 OF 2015

Purvi Mukesh Gada Applicant
versus
Mukesh Popatlal Gada and others Respondents

Mr.Subhash Jha with Sanjana Pardeshi I/by Law Global for applicant.

Ms.Edith Dey I/by Mikhail Dey for respondent no.1.

Ms.Neeta S. Jain, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 24th July 2018

PC :

1. This is an application preferred by original respondent in Criminal Appeal No.1004 of 2015. The applicant herein has prayed for vacating the interim stay granted by this Court in Criminal Application No.1004 of 2015 by order dated 20th June 2016. It is also prayed that the action be initiated against the respondents herein for violating the order dated 20th June 2016.

2. Learned counsel for applicant herein submitted that this Court by order dated 20th June 2016 had granted stay to the further proceedings and the respondent ought to have deposited maintenance. It is submitted that the Trial Court had awarded maintenance to the present applicant. It is further submitted that even pursuant to the order dated 20th June 2016, the respondent

no.1 herein had paid the maintenance to the applicant. However, since last one year, the respondent no.1 had discontinued to pay the maintenance.

3. Mr.Jha appearing for respondent submits that the order dated 20th June 2016 has to be interpreted as granting stay to the proceedings before the Lower Court. It is submitted that the stay of the proceedings would also include the order granting maintenance passed by the Trial Court. It is submitted that the applicant is not giving access of the children to respondent herein. Although the respondent no.1 had continued to pay the maintenance even pursuant to the interim order passed by this Court, but that was mistake and in the event respondent no.1 succeeds in the petition, there will be no mechanism to recover the said amount.

4. It is noted that the Trial Court had awarded maintenance to the applicant herein. Thereafter the respondent no.1 had preferred Criminal Application No.1004 of 2015. Main proceedings are arising out of Protection of Women from Domestic Violence Act, 2005. This Court had indeed granted interim relief by order dated 20th June 2016 and further proceedings are stayed. When this application was heard by this Court on 20th April 2018, the matter was adjourned and the respondent no.1 herein was directed to take instructions as to the period in which entire arrears will be paid/deposited in the matter. It is noted that the Court had granted interim relief in the main matter. It is also taken into consideration that even pursuant to the order of stay, for some time, the respondent no.1 had continued to pay the maintenance.

5. In the interest of justice and to strike balance between rights of both the parties, it would be appropriate to direct respondent no.1 to pay 50% arrears of maintenance as of today within six weeks from today. No case for vacating stay is made out. Criminal Application No.1108 of 2017 is disposed of.

6. Criminal Revision Application No.1004 of 2015 be listed for hearing on 14th August 2018.

(PRAKASH D. NAIK, J.)

MST