IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.689 OF 2019

1 Sangramsingh Rajendrasingh Deshmukh
Age: 38 years, occu: service,
Residing at Presting Fountana
B Wing behind Maratha Mandir
Bhavdhan, Pune.

2 Rajendrasingh Bhimrao Deshmukh
Age: 64 years, occu: retired
Residing at Rajlaxmi N12 C38 Hudco,
T.V. Centre, Aurangabad. Petitioners

VERSUS

1 Archana Alias Bhargavi Sangramsingh Deshmukh
Age: 32 years, occu: service,
Residing at C/o Sharadrao Dinkarrao Shelar
R/o Plot No.47, “Chandrama” Niwas
Chatrapati Housing Society, Hirapur Road,
Chalisgaon, District: Jalgaon

2 State of Maharashtra
through its AGP Respondents

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Mr. K.C. Sant h/f Mr. Patankar Himanshu A. Advocate for petitioners.
Mr. Thoke Dhananjay B. Advocate for respondent No.1.
Mr. K.D. Mundhe, AGP for respondent No.2:

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CORAM : **V.L. ACHLIYA, J.**

Date: June 25th , 2019

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ORAL JUDGMENT

1 Leave to amend prayer clause and to delete relief claimed in respect of order dated 4.7.2016. The amendment to be carried out forth with.

2 Rule. Rule made returnable forthwith. By consent of the parties taken-up for final hearing at admission stage.

3 By this petition, filed under Articles 226 and 227 of the Constitution of India and section 482 of Code of Criminal Procedure, the petitioners have claimed the relief which reads as under:-

> *" C) Rule may kindly be made absolutely by quashing and setting aside the order dated 20/06/2018 passed by Learned JMFC, 2nd Court, Chalisgaon District Jalgaon in Criminal Application No.135/2018 (Exh.1). "*

4 Heard the learned counsel for the petitioners and respondents and perused the impugned order as well as order dated 4.7.2016 passed in Criminal Application No.1128/2015 which reads as under :-

> *"* *ORDER*
>
> *1) Application at Exh.A-4 is allowed in part.*
>
> *2) Application at Exh.15 is hereby rejected.*
>
> *3) Respondents shall not commit any act of domestic violence against applicant.*
>
> *4) Respondent No.1 Sangramsingh do pay Rs.10,000/- per month to applicant towards interim maintenance allowance from the dater of order till the final disposal of the main application without any fail.*
>
> *5) The respondent No.1 Sangramsingh should produce the child Durgesh Nandini on every first Saturday of every month in the Mediation Room of Hon'ble Family Court at Pune.*
>
> *6) The respondent No.2 Rajendrasingh should produce the child Rajnandini on every third Saturday of every month in the Mediation Room of Hon'ble Family Court Aurangabad.*
>
> *7) On every first Saturday of each month, respondent No.1 Sangramsingh to give to the applicant access of the minor child Durgesh Nandini between 11 a.m. and 2 p.m. at the Mediation room of Hon'ble Family Court at Pune.*

8) On every third Saturday of each month, respondent No.2 Rajendrasingh to give to the applicant access of the minor child Rajnandini between 11 a.m. and 2 p.m. at the Mediation Room of Family Court at Aurangabad.

9) The respondents shall ensure the presence of the child on the appointed days and time at the venue mentioned above and the applicant shall hand-over back the custody of the child on the expiry of the appointed time on each of the aforesaid days at that venue.

10) The respondent No.1 Sangramsingh do pay Rs.1,000/- (Rupees One Thousand only) to applicant towards her traveling expenses whenever she avails her right of access to both daughters on appointed days.

11) Copy of the order be forwarded to Hon'ble Family Court, Aurangabad and Pune for information and necessary arrangement. "

5 Learned counsel for petitioners argued that penalty as envisaged under section 31 of the said Act can be imposed if there is breach of protection order or any interim protection order committed by the person ordered to comply with such order. It is submitted that the 'protection order' as referred in section 31 of the said Act refer to an order passed under section 18 of the said Act. It is submitted that no protection order as contemplated under section 18 of the said Act has been passed as against the petitioners. It is submitted that no order including order in interim nature as contemplated under section 18 of the Protection of Women from Domestic Violence Act was passed against the petitioners by order dated 4.7.2016. In absence of any such order, no cause of action arose to file proceeding under section 31 of the Protection of Women from Domestic Violence Act. It is submitted that, in absence of any such order passed

and breach committed on the part of the petitioners, the proceedings filed under section 31 of the said Act as against the petitioners is illegal and unsustainable in law and amounts to gross abuse of process of law. In this background, learned counsel urged to quash the proceedings initiated against the petitioners.

6 The learned counsel for the respondents fairly conceded that, no order as contemplated under section 18 of the said Act has been passed in the matter so as to invite penal consequences as contemplated under section 31 of the said Act. It is submitted that the proceeding was filed on account of breach of order dated 4.7.2016 passed in the M.A.No.1128/2015.

7 I have carefully considered the submissions advanced in the light of over all facts of the case and more particularly the order dated 4.7.2016 passed in M.A. No.1128/2015, as well as the Application filed under section 31 of the said Act registered as Miscellaneous Criminal Application No.135/2018.

8 In order to initiate proceedings under section 31 of the said Act, it is necessary for the complainant to spell out that the breach of protection order passed under section 18 of the Act has been committed on the part of the respondent/s in the proceedings. The provisions being punitive in nature, same deserves to be construed strictly. Only in the event of breach of protection order, the person can be prosecuted for committing

offence under section 31 of the said Act.

9 The protection order as contemplated and covered under section 31 of the Act to be construed as the protection order passed under section 18 of the said Act. Sections 18 and 31 of the Act read as under:-

> *" **Section 18**:- **Protection Orders** – The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from -*
> *(a) committing any act of domestic violence;*
> *(b) aiding or abating in the commission of acts of domestic violence;*
> *(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved personal;*
> *(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;*
> *(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately b y them without the leave of the Magistrate;*
> *(f) causing violence to the dependents, other relatives or any person who give the aggrieved person assistance from domestic violence;*
> *(g) committing any other act as specified in the protection order.*
>
> ***Section 31**: Penalty for breach of protection order by Respondent:-*
> *(1) A breach of protection order, or of an interim*

protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either discrimination for a term which may ext ent to one year, or with fine which may ext ent to Rs.20,000/-, or with both.

(2) The offence under sub-sectioin (1) shall as far as practicable be tried by the Magistrate who has passed by the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498-A of the Indian Penal Code (45 of 1860) or any other provision of that Code of the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

10 Perusal of the order date 4.7.2016 passed in the proceedings reveals that except the order of grant of interim maintenance and access to her child Durgesh, no specific order has been passed in the matter. The said order also operates against the respondent No.1 & 2 in the original proceeding. In order to make out a case for initiating proceeding under section 31 of the Protection of Women from Domestic Violence Act, 2005, it is incumbent upon the person approaching, for action under section 31 of the said Act to plead and prove that the breach of protection order has been committed, on the part of the respondent/respondents. The term 'protection order' to be read as per the term defined under section 18 of the Protection of Women from Domestic Violence Act. In the application filed under section 31 of the Act, the respondent has not specifically pleaded as to breach of the 'protection order', as contemplated

under section 18 of the Protection of Women from Domestic Violence Act passed in the matter and breach of the same on the part of the respondents. The grievance agitated in the application moved under section 31 of the Protection of Women from Domestic Violence Act, primarily refers to grievance regarding providing access to the child in terms of the order passed in the matter. In absence of any specific breach of protection order pleaded in the application moved under section 31 of the Protection of Women from Domestic Violence Act on the part of respondent, the proceeding deserves to be quashed.

11 It appears that the impugned order has been passed, without application of mind. If the allegations made in the application are taken to their face value and accepted in its entirety as true, still it makes out no case to proceed against the petitioners under section 31 of the Protection of Women from Domestic Violence Act. In that view, the petition deserves to be allowed and the proceeding filed against the petitioners under section 31 of the Protection of Women from Domestic Violence Act liable to be set aside. Accordingly, the petition is allowed in terms of prayer clause 'C'.

12 Rule made absolute in above terms with no order as to costs.

(V.L.ACHLIYA, J)

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