

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1330 OF 2019

1. Sau. Tejaswita Pushpajeet Shinde
Age: 37 years,
Occupation: Temporary Service
2. Anwesha Pushpajeet Shinde
Age:13 years, Occupation: Education,
Since Minor Hence through
Her natural mother
Petitioner No.1
Sau Tejaswita Pushpajeet Shinde
Age:37 years.

Both R/o. C/o Eknath Pandit Salunkhe
Plot No.5, Digambarrao Padvi
Gruhnirman Society, Near Akashwani,
Deopure, Dhule.

... **PETITIONERS**

Versus

1. Shri Pushpajeet Shinde
Age: 43 years, Occupation: Service/Classes
Resident of: B-2, Flat No.602, 603,
Katepuram Society, Pimpale Gurav,
New Sangvi, Pune.

2. The State of Maharashtra

... **RESPONDENTS**

...
Advocate for Petitioner : Mr. Kulkarni Mukul S.
A.P.P. for Respondent-State : Mr. P.K. Lakhotiya
Advocate for Respondent No.1 : Mr. S.S. Jadhavar
...

CORAM : MANGESH S. PATIL, J.
DATE : 24.09.2019

ORAL JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned advocate Mr. S.S. Jadhavar waives service for the respondent no.1 and the learned A.P.P. waives service for the respondent-state. With the consent of both the sides the matter is heard finally at the stage of admission.

2. In a proceeding initiated by the petitioner-wife under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter the D.V. Act) by submitting application (Exhibit-93) she prayed for some interim compensation to enable her to spend for her medical treatment for serious ailments. The application was filed on 30.10.2018. The respondent husband filed say on that application on 17.12.2018. It appears that since thereafter hearing in the main proceeding continued and reached the stage of hearing final arguments. It appears that since the petitioner insisted for decision on this application (Exhibit-93), the learned Magistrate passed the following order:

“This is an interim application. Perused the record. It could be seen that both the parties have already concluded their evidence and the matter is pending for arguments on final application. In such a scenario, this Court has material available before it to decide the entire case on its merit rather deciding this

application on prima facie basis. For this reason, it is in the interest of both the parties to decide the application under consideration alongwith the main application. Order accordingly.

- a. This application be decided alongwith the main application.*
- b. The parties are directed to argue the entire matter on 17.07.2019.”*

This order is now under challenge.

3. The learned advocate for the petitioner submits that when Section 23 of the D.V. Act enables a wife to apply for interim relief, the Magistrate should have decided this application (Exhibit-93) earlier. Instead, he allowed the matter to linger. When a request was made for a decision of this application that the impugned order has been passed. The impugned order deprives the petitioner of her statutory right to claim interim relief and cannot stand legal scrutiny.

4. The learned advocate for the respondent submits that no fault can be found with the impugned order. The Magistrate had noticed that the main matter has reached final stage. It is not that the learned Magistrate has outrightly rejected the application (Exhibit-93). By the impugned order he has merely observed that since the main matter has now reached the final stage, everything can be decided by hearing the arguments of the parties and listed

the matter on 17.07.2019.

5. Since the petitioner had participated in the main proceeding instead of insisting for any decision on the application (Exhibit-93), at the fag end now she is insisting for a decision on her application (Exhibit-93) when the entire matter can be decided.

6. Without going in to the merits as to whether the applicant under Section 23 of the D.V. Act is entitled to claim any such interim relief as is claimed by her under application (Exhibit-93), it is apparent that the application was filed in the month of October-2018 and even the other side had filed say on 17.12.2018. However since thereafter, the petitioner apparently did not press the application. At least there is no material to show that in spite of her insistence the Magistrate refused to decide it at earlier point of time.

7. It appears that the main proceeding continued and reached the stage of final arguments. It appears that at that stage perhaps the petitioner insisted for the decision on the application (Exhibit-93) and the impugned order came to be passed. When this application was filed in the month of October-2018 and when the main matter had reached the stage of final arguments, in my considered view, no fault can be found with the

observations and conclusions of the the learned Magistrate in expecting the parties to go ahead with the arguments so as to enable him to decide the main matter. He has not rejected the application (Exhibit-93).

8. Considering all these aspects, I find no sufficient reason to cause any interference. In fact by this time the main matter including the application (Exhibit-93) could have been decided on merits.

9. The Writ Petition is dismissed. However the learned Magistrate is requested to decide the matter finally including the application (Exhibit-93), by hearing the arguments of both the sides within one month from the date of receipt of the order. The rule is discharged.

[MANGESH S. PATIL, J.]