

KHALID AHMED DESAI ... PETITIONER

SANA RAZVI ... RESPONDENT

Mr. C.A. Coutinho, Advocate for the Petitioner.

CORAM : C.V. BHADANG, J.

Reserved on : 26th March, 2019

Pronounced on : 27th March, 2019

By this petition, the petitioner is challenging the judgment and order dated 31.03.2018, passed by the learned Sessions Judge in Criminal Appeal No. 55/2017, thereby granting interim maintenance of Rs.25,000/- per month to the respondent and the minor son of the parties, from the date of the order.

2. The parties are husband and wife. The respondent filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (Act, for short), against the petitioner, seeking various reliefs. The respondent also sought interim maintenance before the learned Magistrate. The learned

Magistrate by an order dated 01.06.2017, granted interim maintenance of Rs.50,000/- to the respondent and the minor son, from the date of the order.

3. Feeling aggrieved, the petitioner challenged the same before the learned Sessions Judge. The learned Sessions Judge by the impugned judgment has modified the maintenance to Rs.25,000/- per month.

4. I have heard Mr. Coutinho, the learned Counsel for the petitioner and Mr. Lobo, the learned Counsel for the respondent. Perused record.

5. It appears that on 05.09.2018, this Court has recorded a statement on behalf of the petitioner that he is ready and willing to make deposit of Rs.5,000/- per month, without prejudice to his rights and contentions in the matter. In pursuance of that order, the petitioner has deposited an amount of Rs.5,000/- per month on certain dates. Subsequently, on 14.01.2019, this Court directed the petitioner to pay interim maintenance of "atleast Rs.15,000/-", to the respondent, pending the hearing of the matter. According to the learned Counsel for the petitioner, the amount was sent by way of money order,

which was refused by the respondent. The respondent disputes the same.

6. Be that as it may, the principal contention on behalf of the petitioner is that there is no finding, even *prima facie*, arrived at by the Courts below, about the respondent being subjected to an incident of domestic violence by the petitioner. It is submitted that in the absence of such a finding, the Courts would not be clothed with jurisdiction to grant maintenance. For this purpose, reliance is placed on the decision of this Court in the case of **Koushik Anil Gharami Vs. Sangeeta Koushik Gharami** (Criminal Writ Petition No. 32/2014 decided on 05.05.2014), **Gurudas Sanvalo Naik Vs. Saanvi Gurudas Naik** (Criminal Writ Petition No. 17/2015 decided on 04.07.2017) and **Vijayanand Dattaram Naik Vs. Vishranti Vijayanand Naik** (Criminal Revision Application No. 60/2018 decided on 13.02.2019). It is submitted that such a finding about the wife being subjected to an incident of domestic violence is a sine qua non for granting any relief under Section 12 of the Act. Secondly, it is contended that the allegations in the application filed by the respondent are against the mother of the petitioner and thus, the petitioner cannot be held liable to pay the maintenance. Thirdly, it is contended that although, the

petitioner was working in U.S.A., he has since has returned to India and is presently serving with M/s Ali Construction and is earning a gross salary of Rs.25,000/- per month. It is submitted that thus, the petitioner is not able to pay the maintenance of Rs.25,000/- per month as directed by the learned Sessions Judge. It is submitted that the petitioner has been incurring the expenses of medical treatment of the child, who is suffering from dyslexia as well as his educational expenses.

7. On the contrary, it is submitted by Mr. Lobo, the learned Counsel for the respondent that the fact that the petitioner has neglected to maintain the respondent and the minor child, itself is sufficient to infer, atleast, *prima facie*, that the respondent has been subjected to “economic abuse”, which is one of the incidents of domestic violence, within the meaning of Section 3 of the Act. It is submitted that the learned Sessions Judge after taking into consideration all the relevant circumstances, has modified the maintenance to Rs.25,000/- per month, which does not call for any further reduction.

8. An attempt was made during the course of the hearing to see whether the parties can agree for certain amount being paid as interim maintenance, so that the main application can be

decided by the learned Magistrate expeditiously, on its own merits. However, the parties were unable to reach any settlement, inspite of efforts. In such, circumstances, the law has to take its own recourse. The jurisdiction to entertain and grant any relief under the provisions of the Act, springs from the fact of the wife being subjected to domestic violence, within the meaning of Section 3 of the said Act. The learned Single Judge of this Court, sitting at Nagpur, in the case of **Koushik Anil Gharami** (supra) had taken such a view and a similar view has been taken by this Court in the case of **Gurudas Sanvalo Naik** (supra) and **Vijayanand Dattaram Naik** (supra). At the stage of grant of interim maintenance, the Magistrate has to record a *prima facie* finding about the wife being subjected to domestic violence. In the absence of the same, no relief can be granted. I am conscious of the fact that the provisions of the Act being a piece of beneficial legislation, intended to redress the grievance of the wife, who is subjected to an incident of domestic violence, needs to be liberally construed. However, the fact remains that the basic requisite for the Magistrate to assume jurisdiction to grant any relief has to exist and therefore, the Magistrate has to find, atleast *prima facie*, at the stage of granting interim maintenance, that the wife has been subjected to an incident of domestic violence and in the present case, it is economic abuse.

This would also be apparent from the provisions sub-section 2 of Section 23 of the Act.

9. There are certain receipts produced on record in this petition, showing that the education fees of the child have been paid by the petitioner and the petitioner is also incurring expenses for medical treatment of the child, who is suffering from dyslexia. Mr. Coutinho, the learned Counsel for the petitioner, on instructions, submitted that without prejudice to the rival contentions of the petitioner, the petitioner is ready and willing to pay Rs.10,000/- per month to the respondent and the minor child, apart from incurring the education expenses and expenses towards medical treatment of the child, whenever they arise. The statement so made is accepted.

10. I have carefully gone through the impugned order passed by the learned Magistrate and the learned Sessions Judge and I do not find that there is any such finding, albeit, a *prima facie* finding, recorded by the Courts below, showing that the respondent has been subjected to an incident of domestic violence of any kind, by the petitioner, within the meaning of Section 3 of the Act. I find that it would be appropriate that the learned Magistrate decides the main application, which is filed

way back in the year 2015, as expeditiously as possible and within a period of six months from the receipt hereof. It is necessary to note that under sub-section 5 of Section 12 of the Act, the Magistrate is required to make an endeavour to dispose of every such application, within 60 days from the date of its first hearing.

11. In such circumstances, the following order is passed:

ORDER

- (i) The petition is allowed.
- (ii) The impugned judgment and order, is hereby set aside.
- (iii) This would however, be subject to the statement made on behalf of the petitioner that he will pay Rs.10,000/- per month to the respondent, from 31.03.2018, the date of the impugned judgment and order of the learned Sessions Judge.
- (iv) The arrears of such maintenance till 31.03.2019 shall be paid/deposited, within a period of eight weeks from today.
- (v) The amount of Rs.10,000/- per month on and from April, 2019 shall be paid on or before the 10th of each English calendar month.
- (vi) This shall be subject to further statement on behalf of the petitioner that he will bear the expenses for medical treatment/educational expenses of the child, whenever they arise.

- (vii) The respondent is permitted to withdraw the amount already deposited by the petitioner before this Court and/or the Courts below, if any.
- (viii) The learned Magistrate shall proceed to decide the main application as expeditiously as possible and within a period of six months from the receipt hereof.
- (ix) The parties to co-operate for the time bound disposal of the application.
- (x) The petition is disposed of in the aforesaid terms.

C.V. BHADANG, J.

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