

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 232 OF 2018

Laxmikant Shinde

... Petitioner

Versus

Pinky Shinde

... Respondent

Mr. Amay Arjun Phadte, Advocate for the Petitioner.

Ms. Dolorosa Chiquita Tulkar, Advocate for the Respondent.

Coram:- C. V. BHADANG, J.

Date:- 22nd April 2019

ORAL ORDER

The challenge in this petition is to the Judgment and Order dated 01.03.2018 passed by the learned Sessions Judge at Mapusa, in Criminal appeal No.150/2016. By the impugned judgment, the learned Sessions Judge has confirmed the order dated 19.11.2016 passed by the learned Magistrate by which the learned Magistrate has granted interim maintenance of Rs.7,000/- per month to the respondent and has restrained the petitioner from committing acts of domestic violence against the respondent. Admittedly, till today, the petitioner has not paid any amount towards interim maintenance.

2. The petitioner and the respondent were married on

05.03.1997 and have a child who has since attained majority. The parties are admittedly staying separate since January 2014.

3. The respondent filed a complaint under the provisions of The Protection of Women from Domestic Violence Act, 2005 (Act, for short) against the petitioner, seeking various reliefs including monetary relief under Section 20 of the said Act. The learned Magistrate found that this was a prima facie case in favour of the respondent and granted an interim maintenance of Rs.7,000/- which is confirmed by the learned Sessions Judge,

4. I have heard Mr. Amay Phadte, the learned Counsel for the petitioner and Ms. Dolorosa Tulkar, the learned Counsel for the respondent. Perused record.

5. It is submitted by Mr. Phadte, the learned Counsel for the petitioner that the Courts below are in error in holding that prima facie there is a case made out by the respondent that she was being subjected to acts of domestic violence by the petitioner. Reliance is placed on Section 20 of the Act to submit that the monetary relief is available only where the

child or an aggrieved person has suffered any loss as a result of the domestic violence. It is submitted that in the present case, the respondent has not shown that she has suffered any loss on account of the alleged domestic violence meted out to her. The learned Counsel has taken me through the medical reports of the respondent in order to submit that the petitioner cannot be held responsible for the medical condition of the respondent. It is submitted that the petitioner had filed a complaint before the police against the respondent in the year 2014 i.e. prior to the initiation of the proceedings under the Act by the respondent. It is submitted that the petitioner is forced to live separate only on account of the acts and the ill treatment meted out by the respondent to the petitioner. The learned Counsel has also taken me through the complaint lodged by the respondent in order to show the ill treatment meted out to him by the respondent. It is submitted that the allegations of the petitioner having an extra marital affair, are not substantiated. Except this, there are no other contentions raised.

6. The learned Counsel for the respondent has submitted that at this stage the Court was only required to see prima facie case. It is submitted that the definition of domestic

violence is wide enough to even cover mental and physical abuse as well as economic abuse. The learned Counsel has taken me through the Domestic Incident Report (DIR) in order to show that there are detailed allegations made as to how the respondent was subjected to domestic violence by the petitioner.

7. I have considered the circumstances and the submissions made. Normally, this Court would be slow in interfering with the interim order of maintenance, that too in the sum of Rs.7,000/- per month granted to the respondent way back on 19.11.2016. Till today, the petitioner has not complied with the said order. I have gone through the copy of the DIR and there are allegations made against the petitioner by the respondent including that of physical and mental abuse as well as sexual abuse. The learned Magistrate has found that there is a prima facie case made out of the petitioner staying with a woman, out of the wedlock at Dhargal, while the respondent along with her son is staying at Mapusa.

8. A perusal of the definition of 'domestic violence' as contained in Section 3 of the Act, would show that it is an exhaustive definition which includes different heads of

domestic violence, such as physical abuse, sexual abuse, verbal and emotional abuse as well as economical abuse. Prima facie, Section 3(iv)(a) of the Act, shows that economic abuse, includes deprivation of all or any economic or financial resources, to which the aggrieved person is entitled under any law or custom, whether payable under an order of a Court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children. The explanation to Section 3 would show that for the purpose of determining whether any act of omission or commission or conduct of the respondent constitutes domestic violence, within the meaning of Section 3, the overall facts and circumstances of the case have to be taken into consideration. At this stage, the Court was only required to see whether a prima facie case of the respondent being subjected to acts of domestic violence by the petitioner, is made out or not. A detailed examination of the allegations and the counter allegations is not expected at this stage. It does appear that there are complaints and counter complaints lodged by the parties against each other. However, the fact remains that admittedly the parties are staying separate from January 2014 and the petitioner has not provided for maintenance of the respondent or the child, who has since attained majority. Thus, it is not possible to accept

that prima facie no case of domestic violence is made out.

9. Coming to Section 20 of the Act, the said section to the extent relevant reads as under :

“Section 20. Monetary reliefs.- (1) While disposing of an application under sub-section (1) of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to -

- (a) the loss of earnings;
- (b) the medical expenses;
- (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
- (d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of

1974) or any other law for the time being in force.”

10. It can thus clearly be seen that the monetary relief would not only include loss suffered by aggrieved person as a result of domestic violence, but would also include the expenses incurred including the maintenance under, or in addition, to an order of maintenance under Section 125 of the Code of Criminal Procedure. Thus, prima facie, it cannot be accepted that the interim maintenance could not have been granted in terms of Section 20 of the Act.

11. For this reason, I find that the petition is without any merit and it is accordingly dismissed.

C. V. BHADANG, J.

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