

Vidya Amin.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO. 68 OF 2019**

|                             |     |             |
|-----------------------------|-----|-------------|
| Vivek Madaan                | ... | Petitioner  |
| VS.                         |     |             |
| Tamanna Vivek Madaan & Anr. | ... | Respondents |

Mr. Kuldeep Nikam a/w. Ms. Trupti Khadse and Mr. Rahul Chary  
i/b. M/s. Jayakar & Partners, Advocate for the petitioner.  
Mr. Udayan Jain a/w. Ms. Naina Desai, Garima Kapoor, Advocate  
for the respondent no. 1.  
Mr. Vinod Chate, APP for the respondent/State.

**CORAM: Mrs.MRIDULA BHATKAR, J.  
DATED: 21<sup>st</sup> February, 2019.**

**P.C. :**

Upon urgent mentioning, taken on production board.

2. In this Writ Petition under Article 227 of the Constitution of India, the order dated 3<sup>rd</sup> December, 2018 passed below Exhibit 10 by the learned Metropolitan Magistrate, 66<sup>th</sup> Court, Andheri, Mumbai is challenged.

3. The issue involved in this Writ Petition is short and hence, after hearing the learned counsel of both the parties, this Petition is disposed of summarily with following order-

There is a dispute between the petitioner/husband and respondent/wife pending before Metropolitan Magistrate, 66<sup>th</sup>

Court, Andheri under Domestic Violence Act. The Petition for custody of a child is pending before Family Court, Bandra. In the Domestic Violence proceedings, the learned Metropolitan Magistrate by order dated 12<sup>th</sup> December, 2017 has directed the petitioner/husband not to harass the respondent/wife in any manner and so also the petitioner/husband and his other associate should not go on sending SMS to the respondent/wife. After this order, the petitioner/husband admittedly started sending several SMS and especially he posts several messages on social media. He also put nasty posts in respect of HSBC bank and its working. He made charges of corruption against the administration of HSBC bank. The respondent/wife is working in HSBC bank. She received notice for the same, as the petitioner is her husband. Therefore, she rushed to Metropolitan Magistrate Court and moved an Application, which is marked as Exhibit 10 and pointed out that putting such posts in social media when the petitioner/husband is prohibited from sending messages through social media to harass her, this act of petitioner amounts to contempt of order of the Court. The husband contested the said application by filing reply, however, the learned Judge rejected all the contentions of husband and by order dated 3<sup>rd</sup> December, 2018 allowed the said

Application partly and held that the charge against respondent no. 1/husband is required to be framed.

4. The order passed by the learned Metropolitan Magistrate cannot be faulted with in view of the previous order dated 12<sup>th</sup> December, 2017 and the contents of the posts.

5. However, the learned counsel for the petitioner submitted that the petitioner/husband wants to tender unconditional apology for the acts done by him. He prays leniency. The learned counsel further submitted that this being the matter between the husband and wife and custody of child is also an issue, the matter be referred for mediation, if possible.

6. The learned counsel for the respondent/wife submitted that the petitioner avoided to remain present before the learned Metropolitan Magistrate. Now the matter is fixed for framing of charge of contempt.

7. In view of the submissions and as the matter is between husband and wife and the petitioner/husband is ready to submit written unconditional apology before the learned Magistrate and he is also ready to withdraw all the posts and to write a letter to HSBC

Bank of tendering unconditional apology and one post of unconditional apology for HSBC in social media, leniency can be shown in the interest of child. The petitioner/husband shall express to repentance towards his act and shall abide the earlier order dated 12<sup>th</sup> December, 2017 passed by the Metropolitan Magistrate. Hence, the Writ Petition is partly allowed with following conditions:

- (i) The petitioner shall appear before the Metropolitan Magistrate on 12<sup>th</sup> March, 2019 and shall tender written apology unconditional before the learned Magistrate;
- (ii) The petitioner shall tender unconditional apology to HSBC bank by sending letter and unconditional apology post on social media on or before 12<sup>th</sup> March, 2019.
- (iii) In view of this, the order dated 3<sup>rd</sup> December, 2018 passed by the learned Metropolitan Magistrate of framing of charge is set aside. If the petitioner fails to comply with this order, then the learned Metropolitan Magistrate shall proceed for framing of charge.

**(MRIDULA BHATKAR, J.)**