

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

WRIT PETITION No. 129 OF 2019

Mrs. Manaal Sayed Mukhtar Ali ...Petitioner

Versus

Mr.Sayed Mukhtar Ali & Ors. ...Respondents

.....
Ms.Gayatri Gokhale i/b.Rizwan Merchant and Associates for the
Petitioner.

Mrs. Veera Shinde, APP for Respondent No.4 – State.

.....
**CORAM: MRS.MRIDULA BHATKAR, J.
DATED : 09 JANUARY 2019**

P.C.:

1. Upon urgent mentioning, taken on production board.
2. This Petition is directed against the order dated 3rd January, 2019 passed by the learned Addl. Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai, thereby rejecting the application below exhibit 5.
3. The petitioner, who is the original applicant, had filed an application under section 23 of the Protection of Women from Domestic Violence Act, 2005 ("the said Act"). The learned Magistrate refused to pass an ad-interim order on the ground that

it would not desirable to pass the ad-interim order without giving an opportunity to the other side and issued notices to all the respondents.

4. The learned counsel for the petitioner has submitted that the petitioner is 22 years old mother and having a baby boy of two months old. She has further submitted that respondent No.1 is a husband, respondent No.2 is a mother-in-law and respondent No.3 is a sister-in-law. She has further submitted that respondent No.1 is 47 years old. He is having three wives and the petitioner is the fourth wife. She has further submitted that respondent No.1 has suppressed the said fact and also suppressed his real age and got married with the petitioner. She has further submitted that presently, respondent No.1 is in prison at Dubai for fraud, however, child is born from him. She has further submitted that after birth of the child, respondent Nos.1 to 3 are threatening the petitioner that they would take away the child. She has further submitted that respondent No.1, who is in central jail in Dubai, allowed to make a phone call as per law of the land of Dubai. She has further submitted that the petitioner apprehends that respondent Nos. 1 to 3 would take away her child.

5. It is a fit case wherein the learned Magistrate ought to have passed an ex-parte order under section 23 of the said Act. It is necessary for the learned Magistrate to consider the facts of the case so also the object of section 23 of the said Act. The learned Magistrate ought to have taken into account that a baby is of only two months. In view of the facts and the criminal background of respondent No.1, ex-parte interim order in the case of urgency and if the matter is serious, is required to be passed. If such protection is given to the petitioner, no harm will be caused to respondent Nos. 1 to 3.

6. The learned counsel for the petitioner informs that now the matter is fixed before the learned Magistrate on 6th February, 2019.

7. In view of above, I pass the following order without issuing notice to the other side :

- a) Respondent Nos. 1 to 3 or their agents or associates or friends are prevented from threatening and contacting the petitioner;
- b) Respondent Nos. 1 to 3 are also prevented from visiting the residence of the petitioner;

- c) Respondent Nos. 1 to 3 shall not send any associate to the house of the petitioner and shall not approach in any manner;
- d) Respondent Nos. 1 to 3 shall not make an attempt to separate the child from the petitioner i.e., mother, who is at present a natural guardian of the child;
- e) Parties to appear before the learned Magistrate on 6th February, 2019.

8. With this, Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)