

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.100 OF 2017
WITH
CRIMINAL WRIT PETITION NO. 3222 OF 2017

Kishore Dharmabalan Mundakel Applicant.
Vs.
Geeta Maruti Dhotre alias Geeta
Kishore Mundakel Respondent.

Mr. Bharat Mehta i/b Mr. Vinod K. Thekkara
Advocate for Applicant in Revn. and for petitioner in Cri.WP.
Mrs. Geeta Maruti Dhotre @ Geeta Kishore Mundakel
Respondent present in person
Mr. C.D. Mali, learned AGP for State in both matters.

CORAM : K.K.TATED, J.
DATED : 8TH AUGUST, 2019.

P.C.

Heard Learned Counsel for the Parties.

2. By this Writ Petition, petitioner husband under Article 226 of the Constitution of India challenging the order dated 21st November, 2014 passed by Family Court at Bandra, Mumbai below Exhibit – 6 in interim application No. 124 of 2012 in Petition No. A-889 of 2012 directing the petitioner to pay monthly maintenance of Rs. 12000/- to the Respondent No.2 for minor child from the date of application i.e.

09.04.2012 till the disposal of the matter.

3. The petitioner also claimed relief for transfer of application No. 10/DV/2015 filed by the respondent No.2 before the learned Metropolitan Magistrate, 27 Court at Juhu, Mumbai under Section 12, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 and rules 2005 for various reliefs including for an order of maintenance at the rate of Rs.1 Lac per month, to the Family Court, Bandra, Mumbai for hearing and final disposal alongwith petition No. A889 of 2012 filed by Respondent No.2 for divorce under Section 13 (1) (ia) and (ib) of the Hindu Marriage Act, 1955.

4. During the course of argument, the learned counsel for petitioner submit that, at present, petitioner is seeking relief of transfer of matter from Magistrate Court to the Family Court at Bandra, Mumbai for hearing and final disposal on its merits.

5. In criminal revision application No.100 of 2017, petitioner husband challenges the order dated 16.12.2016 passed by Ld. Session Court in Criminal Appeal No.611 of 2016 and the order dated 06.05.2016 passed by Ld. Metropolitan Magistrate, 27th Court, Mulund, Mumbai in CC

No. CC 10/DV/2015 directing the petitioner to pay interim maintenance of Rs.15,000/- per month to his son from the date of filing of the application i.e. 22.01.2015 till the final disposal of the said application.

6. The learned counsel for petitioner submit that as per Section 26(3) of the Protection of Women from Domestic Violence Act, 2005, duty cast upon the person to disclose the proceeding if any filed by them for all the same reliefs before any other Court and the order if any passed. Section 26 of the said act read thus :

“26. Relief in other suits and legal proceedings.

- (1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil Court, family Court or a criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.
- (2) Any relief referred to in sub-section (1) may be sought for in addition to and alongwith any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal Court.
- (3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

This clause provides that any relief available under the proposed legislation may also be sought in any legal proceeding before a civil Court, family Court or a criminal Court and that any relief which may be granted under the proposed legislation may be sought for in addition to and alongwith reliefs sought for in a suit or legal proceeding before a civil or criminal Court. Sub-clause (3) lays down that the aggrieved person shall be bound to inform the Magistrate of the reliefs obtained by her in any proceeding other than proceedings under the proposed legislation.”

7. The learned Counsel for Petitioner submits that in the present proceeding though the Family Court passed order of maintenance of Rs.12,000/- per month on 21.11.2014, the learned Magistrate failed and neglected to consider the same at the time of passing the order dated 06.05.2016 directing petitioner to pay further sum of Rs.15,000/- per month to son. He submits that if both the matters are heard together then, there is no question of any conflicts of the interest of both the parties.

8. The learned Counsel for Petitioner submits that the application filed by the Respondent No.2 wife being case No.10/DV/2015 under Section 12 of Protection of Women from Domestic Violence Act, 2005 before the Magistrate 27th Court at Mulund, Mumbai to be transferred to the Family Court, Bandra Mumbai for hearing and final disposal on its

own merits. He submits that our High Court in the matter of ***Sandip Mrinmoy Chakraboarty Vs. Reshita Sandip Chakrabarty & Ors. 2019(1) Bombay Case Report (Criminal) 297*** held that in such cases, the matter pending before the Magistrate Court, under the Protection of Women from Domestic Violence Act, 2005 can be transferred for hearing alongwith the matter pending before the Family Court. Paragraph Nos.13 to 15 of this Authority read thus:

“13. Coming to the present controversy which this Court is called upon to deal with viz. Relief that is sought for transfer of proceedings pending on the file of the learned Judicial Magistrate First Class at Cantonment Court, Pune to the Family Court at Pune, the apprehension expressed by the learned counsel for the respondents that the Family Court is not clothed with the powers as the one which is conferred on the Magistrate under Section 23 of the Domestic Violence Act, 2005 is misconceived and since it is already noted above that the Family Court which acts as a Civil Court and since it is vested with all powers of Civil Court which includes specific provision to pass interim orders, the said apprehension can be dispelled and it is to be noted that the Family Court is competent not only to deal with the application preferred under Section 12 and specifically in the light of the orders conferred by Section 26 of the Domestic Violence Act, 2005 the relief available under Section 18, 19, 20, 21 and 22 can be sought in proceeding before the Family Court and the Family Court being a Civil Court is empowered to exercise all the powers of the Civil Court which would include a power to grant interim and ex-parte orders.”

“14. A perusal of the proceeding involved in this lis would reveal that no doubt there are certain distinct reliefs claimed in two proceedings. It is not the case of the learned counsel for the petitioner to curb the progress of the proceedings or to curtail some of the reliefs, which are sought by the respondents. It is his submission that these two proceedings, in order to avoid decision which will adversely affect either of the parties, could be clubbed together and dealt with by the same Court and it is for the Family Court which is empowered to deal with the said proceedings in the manner which would serve the interest of justice and the interest of parties in a better manner. The prayer of the learned counsel for the petitioner is not to deprive the petitioner of any of the reliefs which she has sought in the Domestic Violence proceedings, but his only claim is that it can be decided before the Family Court effectively and since both the proceedings are instituted by the wife, the Family Court may direct the parties to lead common evidence in support of the overlapping reliefs which are sought and it is always open for the Family Court to deal with the other issues independently.”

“15. I find sufficient substance in the said contention of the learned counsel for the petitioner and in the backdrop of the scheme of Enactments which has been discussed above, there is no iota of doubt in my mind that the reliefs sought before the learned Magistrate in the Domestic Violence proceedings can be effectively tried and granted by the Family Court. Further it is settled position of law that the Court which is competent to grant a final relief is also competent to grant an interim relief so as to protect the subject matter of the proceedings before it.”

9. On the basis of this submissions and the law declared by our High Court in the matter of Sandip Mrinmoy Chakraboarty (supra), the learned counsel for the petitioner submits that the application filed by the respondent wife under the D.V. Act to be transferred to the Family Court, at Bandra, Mumbai for hearing and final disposal on its own merits. He further submits that liberty may be granted to the petitioner to make appropriate application for deciding the maintenance before the Family Court after considering both the orders i.e. order passed by the Family Court as well as order passed by the learned Magistrate.

10. The learned counsel for the petitioner submits that as the order passed by this Court, they deposited the maintenance charges. He submits that, out of that, sum of Rs.6,65,500/- is lying in the registry of this Court. He submits that the said amount to be transferred to the Family Court at Bandra, Mumbai directing the registry of that Court to deposit in fixed deposit of any Nationalized Bank initially for the period of one year and same to be continued till the decision of the matter and / or order passed by the Family Court.

11. On the other hand, Geeta Maruti Dhotre the respondent No.2 party as person vehemently opposed to present Writ Petition as well as criminal Revision

Application. She submits that the learned Magistrate after considering evidence on record rightly held that the minor child is entitled maintenance charges of Rs.15,000/- per month. She submits that in her application under the D.V. Act, she had disclosed the pendency of the matter before the Family Court, about the application for maintenance charge. After considering, all these facts, the learned Magistrate held that the minor child is entitled to maintain charges @ of Rs.15,000/- per month. She further submits that there is no question of transferring the matter from the Court of learned Magistrate, Mulund to the Family Court, at Bandra, Mumbai. She submits that it will become difficult for her to engage another advocate for Family Court to defeat her case.

12. The party in person further submits that even the Family Court after nothing evidence on record rightly directed petitioner to pay sum of Rs.12,000/- per month and also to reimburse the medical as well as education charges. She submits that petitioner failed and neglected to reimburse medical and education charges of minor son for last seven and half years. Therefore the petitioner to be directed to reimburse the said amount on submitting documentary proof to that effect. She further submits that if matter is transferred for one Court to another Court, same may affect her right. Therefore, there is no question of

allowing the petitioners application to that effect.

13. Respondent No.2 party in person, further submits that the sum of Rs.6,65,500/- lying in the registry of this Court, may be permitted her, to withdraw the same for the welfare of child / son. She submits that it is very difficult for her to maintain herself as well as her child. She submits that, she has to spend for education as well as medical expenses of the child. Therefore in the interest of justice Hon'ble Court be pleased to permit her to withdraw the said amount of Rs.6,65,500/-.

14. I heard both the parties.

15. Learned counsel for petitioner made a statement that, he received instructions from Petitioner not to press any other prayers in the Writ Petition except transfer of D.V. Act matter to the Family Court at Bandra, Mumbai. Liberty to be granted to the petitioner to make appropriate application before the Family Court for all these prayers. He further submits that petitioner will continue to pay maintenance of the child at the rate of Rs.15000/- per month from the Month of August, 2019 including education and medical expenses of the minor child on actual basis.

16. It is to be noted that the issue involved in both the matters are similar. Both the parties are required to lead evidence on same point, if both the matters are heard by same court then it is convenient to both the parties. Not only that the possibility of conflicting orders cannot be over ruled.

17. In view of the above mentioned facts, it is necessary to set aside order passed by the learned Additional Sessions Judge, Mumbai in Criminal Appeal No.611 of 2016 dismissing the Petitioner's husband's appeal challenging the order passed by the trial court. Liberty granted to the Petitioner to make appropriate application before the Family Court for the same cause of action with liberty to Respondent – wife to oppose the same by filing Affidavit-in-reply, if any. The Family Court to decide that Application on its own merits without being influenced by the order passed by this Court, in the present matter.

18. Considering the statement made by advocate for petitioner and as the law laid down by High Court in the matter of Sandip Mrinmoy Chakraborty (supra). I am of the opinion that the petitioner has made out the case for transferring the petition No.10/DV/2015 filed by the respondent wife before the learned Metropolitan Magistrate,

27 Court, Mulund, to the Family Court at Bandra, Mumbai for hearing and final disposal alongwith the Marriage Petition No. A-889 of 2012 filed by the respondent wife for divorce. I also satisfied that the sum of Rs.6,65,500/- which is deposited by the petitioner in registry of this Court is required to be transferred to the Family Court at Bandra Mumbai in the account of Marriage Petition No. A-889 of 2012 directing Family Court to deposit the same in fixed deposit of any Nationalized Bank initially for a period of one year and same to be continued till further orders from the Family Court itself.

19. Liberty can be granted to the respondent No.2 wife to make appropriate application before the Family Court for withdraw of the said amount of Rs.6,65,500/- and that to be deposited on its own merits. Hence following order.

- a) C.C. No.10/DV/2015 filed by respondent No.2 wife Geeta Kishore Mundakel under Sections 12, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 in the Court of learned Metropolitan Magistrate, 27 Court at Mulund, Mumbai is transferred to the Family Court at Bandra, Mumbai for hearing and final disposal on its own merits alongwith the Marriage Petition No.

A-889 of 2012 filed by wife under Section 13(1) (ia) (ib) of the Hindu Marriage Act, 1955 for divorce.

- b) All pending applications in C.C. No.10/DV/2015 before learned Metropolitan Magistrate, 27 Court at Mulund stands transferred to the Family Court at Bandra, Mumbai.
- c) Liberty granted to both the parties to make appropriate applications for deciding a monthly maintenance and that to be decided by the Family Court on its own merits.
- d) The Order passed by the Additional Sessions Judge, Mumbai in Criminal Appeal No.611 of 2016 is set aside with liberty to Petitioner's husband to file appropriate application before the Family Court for the same cause of action and that to be decided on its own merits.
- e) Registry of this Court is directed to transfer of sum of Rs.6,65,500/- with accrued interest if any to Family Court, Bandra in the account of Hindu Marriage Petition No. A-889 of 2012 immediately.
- f) Liberty granted to the respondent wife Geeta

Maruti Dhotre to make appropriate application before the Family Court for withdrawal of sum of Rs.6,65,500/- and that to be decided on its own merits after hearing both the parties.

- g) Petitioner husband is directed to pay sum of Rs.15000/- by way of maintenance to the child from the Month of August, 2019 and also to pay all the expenses of child past and present towards medical and education on production of original receipts till further orders from Family Court, Bandra, Mumbai.
- h) All contentions of both the parties are allowed.
- i) Both the matters are disposed of accordingly.
- j) No Order as to costs.

(K.K.TATED, J.)