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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.910 OF 2020

Rajiv Sadashiv Jadhav	... Petitioner
Vs.	
Sushila Sadashiv Jadhav and Anr.	... Respondents

Mr. Rushikesh Gajanan Patil for the Petitioner.
Mr. P.H. Gaikwad – Patil, APP for the Respondent - State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 11th MARCH 2020.

P.C.:

1 Heard the learned counsel for the petitioner and the learned APP for the Respondent No.2. The petitioner herein happens to be the son of the Respondent No.1. The husband of the Respondent No.1 expired on 1st January 2015. Prior to the demise of the husband, the petitioner was residing separately however, thereafter, he started residing with his mother.

2 The Respondent No.1 faced harassment and ill-treatment at the hands of the petitioner and his wife, hence, the Respondent No.1 was constrained to file an application before the Sub-Divisional Officer under

section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. It is contended in the said application that the petitioner herein has caused mental harassment to the Respondent No.1 at the behest of his wife. That the petitioner and his wife had gone to the extent of assaulting her. She had also filed police report. The petitioner was arrested under section 151 of the Code of Criminal Procedure on the basis of non-cognizable report filed by the Respondent No.1. The Respondent No.1 had made all efforts to convince her son by way of mediation through her relatives. Being fed up with the harassment meted out to her at the hands of the petitioner and his wife, the Respondent No.1 had started residing with younger daughter. However, the petitioner continued his interference in the said family.

3 The petitioner is running a shop in Kapil Tirth Market. He owns two two-wheelers and one four wheeler. That he had purchased a flat in Fulewadi and also undertaken construction of extra rooms.

4 The Sub-Divisional Officer upon considering rival contentions had directed the petitioner to pay an amount of Rs.3,500/- towards maintenance to the Respondent No.1 besides the expenses for medical

treatment/health care. The Sub-Divisional Officer had also directed the petitioner to give a self-contained room to the Respondent No.1. The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill 2019 defines “Welfare” to include the provision of food, healthcare and other amenities necessary for senior citizens. The Bill expands the definition further to include, housing, clothing, safety and other amenities necessary for the physical and mental well-being of a senior citizens or parents.

5 Being aggrieved by the said judgment and order, the petitioner had approached the Additional Collector. It was contended in the appeal memo that the Respondent No.1 is capable of earning. That she sells pickles and earns Rs.200/- everyday and therefore, grant of maintenance is not justified. The Additional Collector after hearing rival parties had upheld the order passed by the Sub-Divisional Officer and hence, this petition.

6 The Appellate Court has observed that the Respondent No.1 is more than 62 years old. That the house where she is residing stands in her name. That she has no capacity to earn. She was physically and mentally harassed at the hands of the petitioner.

7 In fact, it was the duty of the petitioner to maintain his mother who happens to be a widow. That he has not allowed her to reside peacefully. The petitioner has failed to maintain his old aged mother. She is protected under the Act. It is more than clear that there is negligence on the part of the petitioner to perform his duties towards his mother.

8 The Sub-Divisional Officer has granted a paltry amount of Rs.3,500/-. In view of this, Respondent No.1 is at liberty to seek enhancement of maintenance amount. It is unfortunate that a moral obligation has crystalized into a duty enforceable by law.

9 The appellate Court has failed to comply with section 14 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The order of maintenance was passed by the Sub-Divisional Officer on 30th April 2019 and the appeal is dismissed in December 2019. However, the appellate Court has not granted any interest on the said amount although it is more than clear that the petitioner has not paid any maintenance since 26th February 2018. Section 14 reads thus :-

“14. Award of interest where any claim is allowed. —Where any Tribunal makes an order for maintenance made under this Act, such Tribunal may direct that in addition to the

amount of maintenance, simple interest shall also be paid at such rate and from such date not earlier than the date of making the application as may be determined by the Tribunal which shall not be less than five per cent. and not more than eighteen per cent.:

Provided that where any application for maintenance under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) is pending before a Court at the commencement of this Act, then the Court shall allow the withdrawal of such application on the request of the parent and such parent shall be entitled to file an application for maintenance before the Tribunal.”

10 The amendment Bill also provides that if the children fail to comply with the maintenance order, the Tribunal may issue a warrant to levy the due amount. Failure to pay such fine may lead to imprisonment of upto one month or until the payment is made, whichever is earlier.

11 In view of the above discussion, the petition deserves to be dismissed.

12 The petitioner shall pay interest at the rate of 8% per annum on the maintenance amount of Rs.3,500/- to the Respondent No.1 from 26th February 2018. The petition is dismissed and stands disposed of accordingly.

(SMT. SADHANA S. JADHAV, J.)