

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.323 OF 2020

SANDEEP JAGUBHAI RATHOD AND ORS.)...PETITIONERS

V/s.

THE STATE OF MAHARASHTRA AND ORS.)...RESPONDENTS

Mr.Ashok Mishra a/w. Mr.Yogesh Devnani i/b. Solicis Lex,
Advocate for the Petitioners.

Mr.R.M.Pethe, APP for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 18th FEBRUARY 2020

P.C. :

1 Heard the learned counsel appearing for petitioner/
original respondent/husband. What is challenged in this petition
is the interim order passed by the learned Metropolitan Magistrate
awarding interim maintenance which is confirmed by the learned
Additional Sessions Judge in an appeal under Section 29 of the

Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as Domestic Violence Act for the sake of brevity).

2 Perused the impugned orders. Scope of interference in an interim order granting relief in a proceeding under the Domestic Violence Act is crystallized by this court in the matter of Abhijit Bhikaseth Auti vs. State of Maharashtra¹. Paragraph 25(iii) of that judgment reads thus :

“25(iii) An appeal will also lie against orders passed under sub Section 1 and sub Section 2 of the Section 23 of the said Act which are passed by the learned Magistrate. However, while dealing with an appeal against the order passed under Section 23 of the said Act, the appellate Court will usually not interfere with the exercise of discretion by the learned Magistrate. The appellate Court will interfere only if it is found that the discretion has been exercised arbitrarily, capriciously, perversely or if it is found that the Court has ignored settled principles of law regulating grant of refusal of interim relief.”

1 Criminal Writ Petition No.2218 of 2007 decided on 16th September 2008

3 I am unable to find any perversity or arbitrariness in the impugned order passed by the learned trial Magistrate which is confirmed by the learned Additional Sessions Judge in awarding interim maintenance to the petitioner. Therefore, the following order :

ORDER

- i) The petition is rejected.
- ii) Needless to mention that the learned Metropolitan Magistrate should endeavour to dispose off the main application within a period of sixty days from today.

(A. M. BADAR, J.)

Arti V.
Khatate

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