

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.690 OF 2020

GOVIND LAXMICHAND CHAUHAN)...PETITIONER

V/s.

STATE OF MAHARASHTRA & ORS.)...RESPONDENTS

Mrs.Ratna Jaiswal, Advocate for the Petitioner.

Mr.A.R.Kapadnis, APP for the Respondent – State.

Mr.Mandar Limaye, Advocate for the Respondent No.2.

CORAM : A. M. BADAR, J.

DATE : 24th FEBRUARY 2020

P.C. :

1 By this petition, the petitioner/original respondent/husband is challenging the appellate order passed by the learned Additional Sessions Judge, Mumbai, in confirming the interim order passed in a proceeding under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as Domestic Violence Act for the sake of brevity) granting maintenance to the contesting respondent no.2.

2 Heard the learned counsel appearing for the petitioner /original respondent/husband. She argued that the aggrieved person was doing work for earning her livelihood as is admitted by her in her reply filed in the Appellate Court. It is further argued that the petitioner/original respondent/husband was ever willing to keep the aggrieved person with her and to maintain her, as seen from letters addressed to Police and Mahila Aayog. It is further argued that the petitioner/original respondent/husband is suffering from schizophrenia and is not doing work for his livelihood, and therefore, the petition needs to be allowed.

3 Heard the learned counsel appearing for the aggrieved person. He argued that the learned Appellate Court has considered the matter in proper perspective and therefore, there is no need to interfere in the appellate order confirming the grant of maintenance.

4 I have considered the submissions so advanced and also perused the material placed before me including the impugned order.

5 The aggrieved person, in the year 2016, preferred an application under Section 12 of the Domestic Violence Act alleging domestic relationship and domestic violence against the petitioner herein/original respondent who happens to be her husband as well as other relatives of the husband. She alleged that on 2nd November 2015, the petitioner/original respondent /husband had quarrel with her, in anger beat her as well as her children and tried to strangle her, and therefore, on 3rd November 2015, she left her matrimonial home along with her children.

6 Claim for interim maintenance of the aggrieved person and her two children was considered by the learned trial Magistrate and by observing that the petitioner/original respondent/husband is working in the shop of his father and is having sufficient source of income, the learned trial Magistrate was pleased to allow monthly interim maintenance at Rs.5,000/- to the aggrieved person, at the rate of Rs.3,000/- per child and in addition, an amount of Rs.5,000/- per month came to be awarded as monthly rent. This order came to be carried in appeal by the

husband and by the impugned order dated 13th January 2020, the learned Appellate Court was pleased to reject the appeal.

7 Scope of interference in discretionary orders is elaborated in the judgment of **Abhijit Bhikaseth Auti vs. State of Maharashtra**¹ and Clause (3) in paragraph 25 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.”

8 It is, thus, clear that scope of interference in an interim order passed under the Domestic Violence Act is very limited. In

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

the case in hand, the learned Appellate Court has rightly considered that the husband is shown to be doing business in the cause title of his appeal memo and even otherwise, from the record it is gathered that he is working at the shop of his father. As against this, though it is alleged that the wife is working as a receptionist, nothing is brought on record to show her earnings. Therefore, her statement in her reply that her earnings are very less and are spent on education of her kids cannot be construed as to mean that the wife is earning, so as to maintain herself and her children by having the same standard of living as she was availing while residing with her husband and in-laws.

9 The quantum of maintenance always lies with the discretion of the learned Magistrate and said discretion cannot be interfered with, unless and until it is shown as arbitrary or capricious. The learned Appellate Court has considered various letters issued by the husband to the various authorities and held that such letters are not reflecting bonafides on the part of the husband to resume cohabitation. The learned trial Magistrate as

well as the learned Appellate Court gave a finding that the aggrieved person and her two children are neglected by the petitioner/original respondent/husband and with such observation, the Appellate Court has confirmed the order of the learned trial Magistrate.

10 No infirmity can be found in the impugned order of the Appellate Court. The discretion exercised in proper perspective by the learned trial Magistrate is affirmed by the Appellate Court in the appeal. As such, no case for interference is made out.

11 The petition, therefore, fails and the same is rejected.

(A. M. BADAR, J.)

Arti V.
Khatate

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