

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1006 OF 2020

KAUSHAL ARVIND THAKKER)...PETITIONER

V/s.

JYOTI KAUSHAL THAKKER AND ANR.)...RESPONDENTS

Mr.Vikram Deshmukh a/w. Mr.Nachiket Khaladkar, Advocate for the Petitioner.

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

CORAM : A. M. BADAR, J.

DATE : 28th FEBRUARY 2020

P.C. :

1 By this petition, the petitioner/original respondent /husband in an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the Domestic Violence Act for the sake of brevity)is challenging the judgment and order dated 5th February 2020 passed by the learned Additional Sessions Judge, Greater Bombay, in Criminal Revision Application No.123 of 2020, thereby disposing off the

said revision application and confirming the order dated 10th January 2020 passed by the learned trial Magistrate in Criminal Case No.172/DV/2017. By this order, the learned trial Magistrate directed the petitioner herein/original respondent/husband to appear personally for cross-examination in the proceedings under the Domestic Violence Act initiated by the respondent no.1 herein/the aggrieved person.

2 Heard the learned counsel appearing for the petitioner/ original respondent/husband at sufficient length of time. He drew my attention to the application for recording evidence via video conferencing moved by the petitioner/original respondent/ husband and reply to the said application by the aggrieved person. With this, it is argued that despite objection of the aggrieved person, the said application came to be allowed because the petitioner herein/original respondent/husband is a resident of United States of America (U.S.A.). The learned counsel further argued that once the learned trial Magistrate had directed recording of evidence via video conferencing, it was not

permissible for him to direct the petitioner herein/original respondent/husband to appear personally for cross-examination. It is further argued that this course of action could have been adopted by the learned trial Magistrate when the earlier order was modified by him. It is further argued that the revisional court erred in placing reliance on Section 28 of the Domestic Violence Act. It is further argued that there were only two instances of domestic violence and the learned trial court had rejected the application for interim relief. Therefore, the case is not of grave domestic violence. Therefore, the learned trial Magistrate ought to have recorded the cross-examination via video conferencing. It is further argued that the petitioner/original respondent/husband could not have been blamed for failure of video conferencing and the cross-examination can be conducted by using Skype facility.

3 I have considered the submissions so advanced and also perused the impugned revisional order as well as the original order of the learned trial Magistrate.

4 Paragraph 4 of the order dated 10th January 2020 passed by the learned trial Magistrate reads thus :

“4 The case is pending for cross examination of respondent on the affidavit. However, till today since filing this D. V. case respondent never appeared. It was agreed to proceed cross examination through V. C. but due to technicalities and service failure of internet cross examination cannot be conducted. On one occasion the respondent was not available. Now, cross is of respondent and not of any witness. So, cross examination is of important person involved in petition is pending. However, it can not be said that in future also there would not be failure of internet service. Internet service failure is there since more than 1 month. If this respondent present before this court personally then it will be very easy to judge respondent's demeanor and his body language for appreciating evidence. Further in D.V. matter if respondent never appeared then it is also difficult to judge the real nature of respondent. Hence, considering the nature of proceeding it required respondent to appear personally. Thus, I proceed to pass following order.”

5 With this observation, the learned trial Magistrate directed the original respondent/husband i.e. the petitioner herein to appear personally for cross-examination. This order was carried in revision by the original respondent/petitioner herein/husband and the learned revisional court held that the impugned order is purely interlocutory order, and therefore, the revision petition came to be rejected. I see no infirmity in the impugned order of the revisional court which holds that the order passed by the learned trial Magistrate on 10th January 2020 is an interlocutory order in the light of judgment of the Hon'ble Apex Court in the matter of V.C.Shukla vs. State through CBI¹.

6 The respondent herein/wife/aggrieved person had preferred an application under Section 12 of the Domestic Violence Act in the year 2017 for claiming various reliefs against the petitioner herein/original respondent/husband. Section 12 of the Domestic Violence Act mandates that the Magistrate shall endeavour to dispose off every such application within a period of sixty days from the date of its first hearing. Proceedings under

1 1980 SCC (Cri) 695

Section 12 of the Domestic Violence Act are predominantly of civil nature and procedure for trial of such cases is prescribed by Section 28 of the Domestic Violence Act which reads thus :

“28 Procedure -

(1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.”

7 In the case in hand, the proceedings are pending right from the year 2017 and the order dated 10th January 2020 of the learned trial Magistrate shows that because of failure of internet facility, it was not possible for him to record the cross-examination through video conferencing. Therefore, by order dated 10th January 2020, the petitioner herein/original respondent/husband is directed to appear personally for cross-examination. Paragraph

no.2 of this order makes it clear that the learned trial Magistrate had requested the petitioner herein/original respondent/husband to appear only once for recording his cross-examination. It is also seen from the order passed by the learned trial Magistrate that he never required the petitioner herein/original respondent/husband to appear before the court during pendency of the subject criminal case. Section 28 of the Domestic Violence Act grants liberty to the learned trial court to adopt the procedure which it deems fit for carrying out mandate of Section 12 of the Domestic Violence Act.

8 Thus, no infirmity can be found in the impugned order. The petition, therefore, fails and the same is dismissed accordingly.

(A. M. BADAR, J.)

Arti V.
Khatate

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