

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1400 OF 2017

Paresh Govardhandas Shah ... **Petitioner**
Versus
Rupal Paresh Shah & Ors. ... **Respondents**

INTERIM APPLICATION NO.1 OF 2020
IN
CRIMINAL WRIT PETITION NO.1400 OF 2017

Rupal Paresh Shah & Anr. ... **Applicants**

IN THE MATTER IN BETWEEN :

Paresh Govardhandas Shah ... **Petitioner**
Versus
Rupal Paresh Shah & Ors. ... **Respondents**

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Ms.Krupali H. Rajani, Advocate for the Petitioner in WP/1400/2007 and for the respondent No.1 in IA/1/2020.

Mr.Jitendra B. Mishra, Advocate for the Respondent Nos.1 and 2 in WP/1400/2007 and for the applicant in IA/1/2020.

Mr.R.M.Pethe, the Additional Public Prosecutor for the Respondent No.3/State in WP/1400/2007 and for the Respondent No.2/State in IA/1/2020.

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CORAM : A.M.BADAR J.

DATED : 5th FEBRUARY 2020.

P.C. :

1 Heard both sides.

2 In an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (herein after referred to as “the D.V.Act” for the sake of brevity) filed by respondent No.1 herein/aggrieved person/wife, a joint pursis came to be filed by parties whereby the petitioner herein/original respondent/husband had agreed to pay amount of Rs.9,000/- per month as an interim maintenance to the child of the couple. The respondent No.1 herein/aggrieved person/wife had agreed vide the said pursis to provide access of the child to the petitioner herein/respondent/husband on every second and fourth Saturday in between 3.00 p.m. to 5.00 p.m. The joint pursis contain a clause to the effect that any deviation from the consent terms shall result in rescinding the consent terms. Then a pursis came to be filed by the petitioner/original respondent/husband informing the Court that the respondent herein/aggrieved person/wife had not acted upon the consent terms and, therefore, consent terms become

redundant and become infructuous. It seems that then the learned trial Magistrate on 18/06/2015 passed an Order below Exhibit 1 by recording a finding that the petitioner herein/original respondent/husband has willfully failed to comply the Order of the Court passed in interim application regarding maintenance of the child. With this observation, by resorting to the provisions of Order XXXIX Rule 11 of the Code of Civil Procedure it has chosen to struck of the defence of the petitioner herein/original respondent/husband.

3 This Order was carried in appeal under Section 29 of the D.V.Act, but the learned Appellate Court was pleased to dismiss the appeal by holding that the same is not maintainable.

4 The learned Counsel for the respondent No.1/aggrieved person/wife fairly consented for quashing the Order passed by the learned trial Magistrate on Exhibit 1 on 18/06/2015 as well as the subsequent Order dated 09/02/2017 passed by the Appellate Court in an appeal under Section 29 of the D.V.Act. He

submits that the proceedings before the learned trial Magistrate be expedited.

5 As the contesting respondents herein respondent Nos.1 and 2 through their Counsel has consented for quashing the impugned Orders, I proceed to pass the following Order :

ORDER

(i) Impugned Order dated 18/06/2015 passed below Exhibit 1 in in O.M.A.No.14 of 2013 pending on the file of the learned Judicial Magistrate First Class, Thane, so also the impugned Order dated 09/02/2017 passed by the learned Additional Sessions Judge, Thane in an appeal bearing PWDVA Criminal Appeal No.64 of 2015 are quashed and set aside.

(ii) As the application under Section 12 of the D.V.Act is pending from the month of January 2013 and as Section 12 of the D.V.Act, mandates that the endeavour shall be made to dispose of the said application within a period of

sixty days from the date of its first hearing, the learned trial Court is directed to decide the application under Section 12 of the D.V.Act within a period of sixty days from the date of communication of this Order, as far as possible.

(iii) Parties to co-operate the learned trial Magistrate in disposing of the application under Section 12 of the D.V.Act within the time frame given by this Court.

(iv) The petition is accordingly disposed of.

(v) In view of disposal of the instant petition, Interim Application No.1 of 2020 therein also stands disposed of.

(A.M.BADAR, J.)

Raju D.
Gaikwad

Digitally signed by
Raju D. Gaikwad
Date: 2020.02.06
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