

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.594 OF 2019

SUMEET ASHOK SAMAT

)...APPLICANT

V/s.

ERA @ VARUNI SUMEET SAMAT AND ANR.)...RESPONDENTS

Mr.Uday Warunjikar, Advocate for the Applicant.

Mrs.Era @ Varuni Sumeet Samat – Respondent No.1 appearing in person.

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

CORAM : A. M. BADAR, J.

DATE : 3rd FEBRUARY 2020

P.C. :

1 By this application, the original respondent/husband is challenging the judgment and order passed in an appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the Domestic Violence Act for the sake of brevity) challenging the interim order passed in proceedings under Section 12 of the Domestic Violence Act.

2 Heard the learned counsel appearing for the applicant/original respondent/husband. The learned counsel drew my attention to the impugned order passed by the learned trial Magistrate. By pointing out paragraphs 14 and 17 of the said order, it is argued that there is averment regarding residence of the respondent no.1 herein/original applicant/wife at the staff quarters. It is further argued that both parties are earning. The wife is earning Rs.80,000/- per month whereas the husband is earning about Rs.1.35 lakh per month. With this, it is further argued that the order passed by the learned Appellate Court is bereft of any reasoning. Income of the parties, status of the parties, the fact that the wife was residing in the staff quarters or in the alternatively in the hostel, are not considered by the learned Appellate Court. The learned counsel further drew my attention to the order passed by the learned Additional Sessions Judge rejecting the application for amendment in the appeal memo. My attention is also drawn to the additional affidavit of the applicant wherein it is stated that the respondent herein/aggrieved person/wife is having a motorcar.

3 I have considered the submissions so advanced and also perused the material placed before me.

4 Resorting to Section 23 of the Domestic Violence Act on the application filed by the aggrieved person for interim relief, the learned trial Magistrate was pleased to grant interim relief to the aggrieved person by directing the husband to secure same level of alternate accommodation to the aggrieved person as enjoyed by her at her matrimonial home, preferably near her present address area or in the alternative he is directed to pay interim monthly rent of Rs.20,000/- from the date of the order.

5 The interim order passed below Exhibit 54 in a proceeding under Section 12 of the Domestic Violence Act came to be challenged in an appeal under Section 29 of the Domestic Violence Act by the original respondent/husband. In an appeal, an attempt was made to show that the aggrieved person is residing in hostel but that amendment came to be rejected. The learned Appellate Court relied on judgment of this court in the matter of

Abhijit Bhikaseth Auti vs. State of Maharashtra¹. Relevant paragraph wherein scope of interference in discretionary orders is elaborated needs to be quoted at this juncture. It 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.”

6 Considering observations made by this court in the said judgment, the learned Appellate Court rejected the contention of the appellant that by interim order, the learned Magistrate cannot grant interim relief as prayed. Thereafter, the

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

learned Appellate Court made some observations in paragraph 16 regarding merits of the case and by the impugned order, the appeal came to be dismissed.

7 Considering the limited scope of appeal as well as the fact that there is vast difference between earnings of both the parties and that the aggrieved person is receiving comparatively much less salary, it cannot be said that the discretion exercised by the learned Metropolitan Magistrate in granting interim relief is perverse, arbitrary or capricious. Consequently, no fault can be found in the impugned order passed by the learned Appellate Court in dismissing the appeal challenging the interim order of maintenance.

8 In the result, there is no scope to hold that the learned Appellate Court has committed any error of law in rejecting the appeal. It cannot be said that the proceedings resulted in abuse of process of court or that in the interest of justice, the impugned order needs to be quashed and set aside. In the result, I pass the following order :

ORDER

The application is rejected.

(A. M. BADAR, J.)

Arti V.
Khatate

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by Arti V.
Khatate
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