

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 5405 of 2019

Mahesh Subhash Mirajkar & ors .. Petitioners
Versus
Sheetal Mahesh Mirajkar & Anr .. Respondents

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Mr. Shubham Kanade i/b S.R. Ganbavle for the petitioners.
Mr. Rushikesh Patil for respondent no.1.
Mr. N.B. Patil APP for the State.

CORAM: BHARATI DANGRE, J.

DATED : 28th FEBRUARY, 2020.

P.C:-

1 The present Writ Petition assails the order dated 7th June 2017 passed by the Judicial Magistrate First Class, Court No.3, Pimpri. By the impugned order, the respondent (petitioner husband) is directed to pay interim maintenance @ Rs.5,000/- per month to the wife. The amount is directed to be paid from the date of the application.

2 Perusal of the impugned order passed on 7th June 2017 would reveal that the said order has been passed on an application moved by the respondent under the provisions of

Tilak

Protection of Women from Domestic Violence Act, 2005. The claim staked before the Court is that the applicant is the wife of the respondent, the marriage being solemnized on 30th July 2009 at Alandi. It is also averred that the marriage was registered on 23rd February 2016 and a specific averment is made that prior to the solemnization of the marriage, the applicant and the respondent were in a relationship of love and since the families of both the parties were in opposition, they got married secretly and the marriage was subsequently registered.

3 The solemnization of marriage is denied in response to the said application and it is contended that the applicant is not the wife and rather the respondent no.1 is married to some other woman impleaded as respondent no.6 and the said marriage is in existence.

4 The learned Magistrate on referring to a relationship defined as “domestic relationship” under Section 2(f) of the Domestic Violence Act, 2005 recorded a *prima facie* finding that the two share a domestic relationship. Accepting the fact that they share a domestic relationship and the claim of the applicant falls within the purview of the Act of 2005, the Magistrate proceeded to decide the said application and granted interim maintenance by ascertaining the earning capacity of the petitioner and the need of being maintained by her husband and directed

payment of maintenance of Rs.5,000/-per month in her favour.

5 In an Appeal filed before the Sessions Court at Pune, the Addl. Sessions Judge by his order dated 3rd July 2019 concurred with the order passed by the Magistrate and refused to interfere. One another reason cited by the Appellate Court is the *prima facie* finding recorded by the Magistrate and a finding that even though the marriage is in dispute, there is no dispute that the applicant and the respondents at some point of time were residing together and that according to the Appellate Court was sufficient to attract the provisions of Domestic Violence Act, 2005.

6 The entire purpose and the objective of the Domestic Violence Act is to protect the women who are in a relationship “in the nature of marriage” and the Act intends to provide effective protection of Rights of women guaranteed under the Constitution and those who are victims of any kind of violence occurring within the family, the Act therefore widely define the term “Aggrieved person”, “Domestic relationship” and the term “Shared household”. Applying the said phraseology involved in the said enactment, the learned Magistrate as well as the District Judge, Pune cannot be said to be legally incorrect when they have accepted the claim raised in the application seeking maintenance under the provisions of the Domestic Violence Act, 2005 even

though the petitioner has disputed that there was a marriage which was solemnized.

7 No legal infirmity exist in the impugned orders and the order being passed being an interim maintenance order, calls for no interference and the Writ Petition deserves to be dismissed.

SMT. BHARATI DANGRE, J