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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 6379 OF 2019

Mrs. Komal Ketan Howal

.... Petitioner

Vs.

1. The State of Maharashtra

2. Mr. Ketan Rajaram Howal

.... Respondents

Mr. Vijay R. Shinde for the Petitioner.

Ms. Sharmila S. Kaushik, APP for State- Respondent No.1.

Mr. Siddharth Kamble for Respondent No. 2.

Coram : NITIN W. SAMBRE, J.

Date : 23rd October, 2020

P.C.:

1. In this petition, the petitioner-wife has questioning the order impugned dated 22nd October, 2019 passed by the learned Ad-hoc District Judge-3 and Additional Sessions Judge, Thane, thereby D.V. Appeal No. 51 of 2019 preferred by the Respondent-husband against the order of the learned Judicial Magistrate First Class, Vashi passed on 13th May, 2019 came to be allowed.

2. The learned Magistrate vide order dated 13th May, 2019 has directed the respondent-husband/father to pay maintenance of Rs.5,000/- per month to the daughter from the date of interim maintenance application, till the disposal of the main application.

3. Learned counsel appearing for the Petitioner would urge that the order impugned is not sustainable as the learned Sessions Judge has committed an error of law in observing that the law laid down by this Court in the matter of Criminal Writ Petition No. 32 of 2014 dated 5th May 2014 at Nagpur Bench and Criminal Revision Application No. 341 of 2014 Deepak Vs. State dated 1st July 2015 passed at Bombay, shall govern the issue. According to him, the main proceedings are not yet finally decided, that by itself will not dis-entitle the Petitioner to claim the maintenance for daughter. Learned counsel would urge that the learned Magistrate has specifically recorded the finding that prima facie it is clear that the applicant has faced domestic violence from the respondent.

4. Per contra, the learned counsel appearing for respondent no.2, Shri. Siddharth Kamble would support the order impugned. According to him, unless the domestic violence is proved, the Court below particularly the Magistrate cannot award the maintenance as has been done in the case in hand. The learned counsel would rely on the following judgments :

1. Deepak @ Gajanan Ramrao Kanegaonkar Vs. State of Maharashtra & Anr., reported in 2015(4) Bombay C.R. (Cri.), 406. (Criminal Revision Application No. 341 of 2014 decided on 1st July, 2015);
2. Koushik s/o Anil Gharami Vs. Sau Sangeeta Koushik Gharami & Ors., reported in 2014 ALL. MR (Cri), 2398. (Criminal Writ Petition No. 32 of 2014 dtd. 5th May, 2014, Nagpur Bench)

5. Learned counsel would invite attention of this Court to the provisions of Section 2(a) i.e. definition of “aggrieved person”, 2(f) i.e. domestic relationship and Section 2(Q) i.e. the definition of “respondent” under the provisions of Prevention of Domestic Violence Act. Learned counsel would urge that the remedy to the petitioner to claim maintenance for the daughter lies elsewhere as there are no findings recorded by the learned Magistrate that there was a domestic

violence practiced by respondent no. 2. As such, according to him, the order impugned does not warrant any interference and sought dismissal of the petition.

6. Considered rival submissions.

7. At the outset, it is required to be noted that the learned Magistrate while awarding maintenance of Rs.5,000/- per month to the daughter has refused to award any maintenance to the wife particularly in the background of the fact that she is gainfully employed. The learned Magistrate after considering rival submissions which were canvassed by the parties has taken note of the fact that Crime No. I 65/2017 for the offences under Sections 498-A, 323, 406, 504, 506 read with 34 of the Indian Penal Code came to be registered against the respondent-father. The learned Magistrate has perused the documents in support of the claim put-forth in the application and the affidavit of the parties and as such recorded prima facie finding of the domestic violence being practiced by the respondent.

8. After recording the aforesaid finding, the learned Magistrate has further proceeded to observe that it is the social, moral

and statutory obligation on the the part of the respondent to maintain his daughter. The learned Magistrate was sensitive to the fact that it was equal responsibility of the mother, who is custodian and as such has directed the present respondent to pay monthly maintenance amount of Rs.5,000/- to the daughter.

9. As far as the aforesaid findings are concerned, the learned Sessions Judge has lost sight of the fact that the learned Magistrate has specifically recorded prima facie finding practicing domestic violence by the husband on the petitioner-wife.

10. While passing the impugned order, reliance placed by the learned Sessions Judge on the aforesaid two judgments is wholly misplaced. It is worth to observe here that both the judgments are delivered by the Court in the facts and circumstances of the case as were canvassed before it. In both these matters, the learned Magistrate has decided the Domestic Violence proceedings finally and instead of awarding maintenance has refused to award the maintenance to the wife, however the Courts below in those judgments proceeded to

individually award the maintenance to the children. In the case in hand, there are prima facie findings recorded by the learned Magistrate about the domestic violence being practiced by the husband on the petitioner-wife, however has not awarded maintenance to the wife on the ground that she is gainfully employed.

11. Learned Sessions Judge was insensitive to the aforesaid factual matrix and observations of the learned Magistrate and has proceeded to set aside the order of the Magistrate without looking into the factual matrix of the case in hand and as that of the judgments relied on.

12. In the aforesaid background, the impugned judgment delivered by the learned Ad-hoc District Judge-3 and Additional Sessions Judge, Thane on 22nd October, 2019 in D.V. Appeal No. 51 of 2019 is hereby quashed and set aside.

13. The parties to the petition are governed by the judgment dated 13th May 2019.

14. The respondent-husband is directed to comply with the order of the learned Magistrate dated 13th May, 2019 within a period of eight weeks from today by depositing the maintenance as ordered in the Court of the learned Magistrate.

15. The Writ Petition as such stands allowed in above terms.

(NITIN W. SAMBRE, J.)