

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION No.104 OF 2015

Pravin s/o. Vishwanathji Gomekar,
 aged about 30 years, Occupation : Nil,
 (Mentally ill), Through his legal guardian
 (Mother) Smt. Sindhu Vishwanathji
 Gomekar, aged 62 years, Occupation : Household,
 R/o. Plot No.36, Gadge Nagar, Nagpur. **PETITIONER**

...VERSUS...

Sau. Rupali w/o. Pravin Gomekar,
 aged about 24 years,
 Occupation : Service, side business,
 R/o. 62/A Diamond Nagar, Hasanbagh Road,
 Nagpur. ... **RESPONDENT**

 Mr. Abhay Sambre, counsel for petitioner.
 Mr. A.B. Bambal, counsel for respondent.

CORAM: ROHIT B. DEO, J.
DATE : 10.12.2020

ORAL JUDGMENT:

Learned counsel for the respondent-wife invites my attention to the order dated 7.6.2014 and in particular to paragraphs 3 and 4 thereof which clarify that only the challenge to the order dated 7.6.2014 survives.

2. The order dated 7.6.2014 is an order granting interim

maintenance to the wife. The learned counsel for the respondent points out that the said order is appealable and as a fact is already challenged in appeal preferred under Section 29 of the Protection of Women from Domestic Violence Act, 2005.

3. Paragraphs 7,8,9 and 10 of the petition preferred by the husband read thus :

“7. It is submitted that, the Learned Magistrate after perusal of the Reply filed by the Petitioner passed the impugned order in Miscellaneous Application No.4069/13, dated 07/06/14, thereby granting maintenance of Rs.3000/- to each sons, without appreciating the material on record as well as without application of mind.

8. It is most humbly and respectfully submitted that the petitioner after passing of the impugned order, filed an appeal in the Court of Learned Sessions Judge at Nagpur. It is submitted all the medical records of the Petitioner were also placed on record to establish is his mental illness. It is submitted that, by reason of mental illness of the petitioner, and he being unfit to prosecute a legal remedy by himself, Miscellaneous Criminal Application No.1893/2014, asking for permission to appoint his mother as his Legal Guardian was also made, so as to prosecute the appeal. A copy of the memo of appeal dated 21/07/14 along with the Miscellaneous Criminal Application No.1893/2014, seeking permission to appoint Petitioner’s mother as his legal guardian dated 21/07/14, is annexed herewith and marked as Annexure No.7 and 8, respectively for kind perusal of this Hon’ble Court.

9. It is mot humbly submitted that, the Learned Sessions Judge by its order dated 22/09/14 rejected the Miscellaneous Criminal Application No.1893/2014, to join the Mother of the Petitioner as a legal guardian of the Petitioner. It is submitted that, the Learned Sessions Judge, failed to appreciate the documents placed on record and further moved ahead

and gave a finding that, the medical certificate annexed has been obtained by giving false information.

10. It is most humbly submitted that, because of the order dated 22/09/14, the appeal filed by the Petitioner challenging the order dated 07/06/14, has now become dormant.”

4. It is, therefore, not in dispute that the appeal challenging the order of interim maintenance is pending. Insofar as the order dated 22.9.2014 rejecting the Misc. Criminal Application 1893/2014 is concerned, the same is already upheld by this Court vide order dated 7th March, 2016.

5. In this view of the matter, there is no propriety in entertaining the petition any further.

6. The petition is disposed of with liberty to the petitioner to continue to prosecute the pending appeal, if so advised.

7. The petition is disposed of.

JUDGE

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