

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

WRIT PETITION NO.4311 OF 2021

Rajesh Ratnakar Modhave ...Petitioner
Vs
Jayashree Rajesh Modhave
& Anr. ... Respondents

...

Ms. Manisha Devkar i/by Ms. Savita Yadav for the
Petitioner.

Mr. Dinesh C. Patankar for Respondent No.1.

Mr. A.R. Patil , APP for the Respondent-State.

CORAM : SANDEEP K. SHINDE J.

DATE : DECEMBER 04 , 2021.

P.C. :

Heard the learned counsel for the parties.

2 On 26th June, 2019, the learned Additional
Sessions Judge & Special Judge, Greater Mumbai has passed
the following order in Criminal Appeal No.157 of 2019.

“ **ORDER**

1. The Criminal Appeal No.157 of 2019 is partly allowed.

2. The order passed by the learned Metropolitan Magistrate, 49th Court, Vikhroli, Mumbai to the extent of granting interim maintenance till final adjudication of the matter is modified as follows:-

(i) The appellant to provide a separate alternate accommodation similar to the shares household in Kalyan area to the respondent within one month.

(ii) The respondent to pay the interim maintenance from 28/01/2019 till the date of providing alternate accommodation. If he fails to provide alternate accommodation, the order to pay Rs.15,000/- p.m. to continue till final adjudication of the matter. The respondent to co-operate with the appellant.

3. The Criminal Appeal No.157 of 2019 is disposed off accordingly.”

3 Pursuant to the order, husband had filed an application below Exhibit 44 contending that he has

complied with the said order and produced copy of leave and licence agreement. Whereafter, on 13th March, 2020, wife moved an application seeking distress warrant against the husband for non-compliance of the order dated 26th June, 2019 passed by the Additional Sessions Judge. The learned Magistrate passed the following order;

“When called, respondent absent. No arguments made. Issue Distress Warrant as prayed.”

4 This order, issuing the Distress Warrant is under challenge.

5 Heard learned counsel for the parties.

6 Prima-facie, the order impugned is passed in defiance of the provisions of Section 125(3) of the Code of Criminal Procedure, 1973. Thus, impugned order is quashed

and set aside.

7 The learned Magistrate shall decide the application below Exhibit 49 filed by the wife in accordance with law and preferably within four months from today

8 Writ petition is allowed in the aforesaid terms and disposed of.

(SANDEEP K. SHINDE,J.)