

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3616 OF 2021

**POOJA @ BHIVSHA TARUN
DHAMECHA**

} PETITIONER

V/S.

**STATE OF MAHARASHTRA
AND ANR.**

} RESPONDENTS

* * * *

Mr. Weseley Menezes a/w. Mr. Rushabh Seth a/w. Mr.
Zenvil Shah i/by. Ganesh & Co., Advocate for the
petitioner.

Smt..S.V. Sonawane, APP for State-respondent no.1.

Ms. Rimpal Trivedi, Advocate for respondent no.2.

CORAM : SANDEEP K. SHINDE, J.

Thursday, 9th December, 2021.

P.C. :

1. This petition under Article 227 of the
Constitution of India, assails the order dated 7th October,
2021, by which the learned Judicial Magistrate First Class,
Vashi, declined to entertain the application below Exhibit-
12 in Criminal Misc. Application No.175/2021.

2. Heard learned Counsel for the parties.

3. Respondent no.2 is husband of the petitioner. Petitioner, filed Cri. Misc. Application No.175/2021 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ("D.V. Act" for short) in July, 2021 and sought several reliefs. Pending application, petitioner moved an application, below Exhibit-12 and sought temporary custody of her minor son. That application was rejected. Hence, this petition.

4. That petitioner and respondent, both have filed custody petitions, being Petition No.103 of 2021 and Petition No. 98 of 2021, in the Court of the District Judge at Thane, under the Guardians and Wards Act, 1890 which are pending before the said Court.

5. The petitioner in Writ Petition No.1563/2021 had applied for habeas-corpus writ, requiring respondent to produce her minor son. The petition was disposed of by the Division Bench of this Court vide order dated 21st May, 2021 without expressing any opinion on the merits. Yet, made certain ad-interim arrangements to operate, till the interim or final orders are passed by the Thane District

Court on custody/access petitions. Clause-5(vi) of the order reads as under :

“Custody Petition No.103/2021 filed by the petitioner-wife and Petition No.98/2021 filed by the respondent-husband are directed to be finally disposed within four months from today.”

6. As stated above, the petitioner filed an application under Section 12 of the D.V. Act in July, 2021 and moved an application below Exhibit-12 therein under Section 21 of the D.V. Act. This application was not entertained by the learned Magistrate in view of the pendency of custody petitions filed by the parties and the order passed by the Division Bench in Writ Petition No. 1563/2021. As a matter of propriety, petitioner ought not to have sought ‘custody’ order, pending custody petitions under Guardian and Wards Act. In consideration of the facts of the case, I do not see any reason to interfere with the impugned order.

7. Yet, I deem it appropriate to direct the learned District Judge to dispose of the Custody Petitions No.103/2021 and Petition No.98/2021, as directed by the Division Bench of this Court.

8. In the facts and circumstances of the case, if the parties to the petition move interim application, seeking access to the child or his temporary custody, the application shall be decided by the Learned Court on its own merits, preferably within a month, from the date on which such an application is moved.

9. All contentions of the respective parties are kept open.

10. Hope the parties, shall not raise technical objections, as to delay the proceedings.

11. Petition is disposed of.

NEETA
SHAILESH
SAWANT

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NEETA SHAILESH
SAWANT
Date: 2021.12.09
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(SANDEEP K. SHINDE, J.)