

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

Criminal Writ Petition No. 353 of 2021

Sou. Manjusha W/o Rameshwar Sadawarti
Vs.
Rameshwar S/o Moreshwar Sadawarti

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. C.G. Barapatre, Advocate for the petitioner
Mr. K.B. Ambilwade, Advocate for the respondent

CORAM : MANISH PITALE, J.

DATED : AUGUST 09, 2021

By this Writ Petition, the petitioner has challenged order dated 26/02/2021, passed by the Court of 18th Judicial Magistrate First Class (Spl. Court PWDV Act), Nagpur in Misc. Criminal Application No. 4906/2016. The said order is passed on an application (Eh.49) filed by the petitioner in the pending application under the provisions of the Protection of Women from Domestic Violence Act, 2005 (D.V. Act), seeking a direction for a DNA test to be undertaken for determining paternity of the person, who the petitioner claims to be the son of the petitioner and the respondent. The petitioner in the present case has filed an application under Section 12 of the (D.V. Act) seeking various reliefs under the provisions of the said Act. In the reply filed on behalf

of the respondent, it is claimed that there is no relationship of marriage between the parties and further that the child allegedly born out of the wedlock is not the son of the respondent. In this backdrop, the petitioner filed the aforesaid application at Exh.49. By the impugned order, the said application has been rejected.

2. Heard learned counsel for the rival parties. Before entering into the question of merits of the impugned order, this Court put a query to the learned counsel for the petitioner as to why an appeal under Section 29 of the D.V. Act was not filed by the petitioner in order to challenge the order passed by the Magistrate. The learned counsel for the petitioner submitted that an appeal under Section 29 of the D.V. Act would have to be filed against the orders passed by the Magistrate relatable to reliefs sought in the application under Section 12 of the D.V. Act and that the impugned order could not be said to be such an order.

3. This Court is unable to appreciate the contentions raised on behalf of the petitioner. Section 29 of the D.V. Act reads as under :

“29. Appeal – There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.”

4. It is an admitted position that the Magistrate in the present case has passed the impugned order on an application filed by the petitioner under the provisions of the Act. The Magistrate has obviously exercised power while considering a miscellaneous application filed in a pending application under the provisions of the D.V. Act. Therefore, the said contention raised on behalf of the petitioner cannot be accepted. The statutory appeal under Section 29 of the D.V. Act does lie before the Court of Sessions and no case is made out on behalf of the petitioner to rush to the Writ Court in order to challenge the said order.

5. Hence, this Writ Petition is dismissed with liberty to the petitioner to approach the Court of Sessions under Section 29 of the D.V. Act. The learned counsel for the respondent, on instructions, submits that if such an appeal is filed, no objection would be raised on the ground of delay and that the appeal could be considered by the Court of Sessions. This Court is also of the opinion that since the petitioner approached this Court under the impression that a Writ Petition could be filed to challenge the impugned order passed by the Magistrate, it would be in the interest of justice that if the petitioner files an appeal before the Court of Sessions under Section 29 of the D.V. Act to

challenge the order impugned herein within a period of two weeks from today, the concerned Court shall consider the appeal on its own merits.

6. It is made clear that this Court has not expressed any opinion on the merits of the matter. Appeal, if filed within the aforesaid period shall be taken up for expeditious disposal by the concerned Court.

JUDGE

MP Deshpande