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

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**CRIMINAL WRIT PETITION NO. 1689 OF 2019
ALON-WITH
INTERIM APPLICATION NO. 821 OF 2020**

Dhanashree A. Sakhale @
Dhanashree R. Gurav

.. Petitioner

Vs.

The State Of Maharashtra & Anr.

.. Respondents

...

Ms. Rajashree Gurav, Advocate for the Petitioner.

Mr. A. R. Patil, APP for the Respondent No.1.-State.

None for Respondent No.2.

...

CORAM : PRAKASH D. NAIK, J.

DATE : June 20, 2022

PC.

1. This petition and the interim application were listed on 13.06.2022. None was present for respondent No.2. Learned advocate for the petitioner/applicant was heard. Vide order dated 13.06.2022, it was recorded that the appearance of advocate representing respondent No.2 is shown on the board. Learned advocate for the petitioner submitted affidavit of service

indicating that notice of hearing was given to respondent No.1. Affidavit dated 10.06.2022 was taken on record. The proceedings were adjourned to 20.06.2022 for passing order in view of order dated 13.06.2022.

2. The petitioner has prayed for the following reliefs in Writ Petition No. 1689 of 2019 reads as under:-

“a. this Hon’ble Court may be graciously pleased to direct the Hon’ble Metropolitan Magistrate 72nd Court at Vikhroli, Mumbai to direct the LIC to credit amount of all the matured LIC policies of the Respondent no.2, Abhay Kamlakar Sakhale, into his savings account no. 35 maintained with the Canara Bank, Amar Mahal, Chambur, Mumbai as the annual school fees of the minor is Rs. 2,00,000/-

(aa) The respondent no.2 be directed to pay Rs. 7 lacs school fees.

or

in the alternative, in view of Magistrate 72nd court being vacant for more than two months, this Hon’ble Court may be pleased to direct the LIC to credit the amount of all the matured LIC policies to the savings account bearing no. 35 of the Respondent No. 2, Abhay Kamlakar Sakhale, maintained with the Canara Bank, Chembur Branch, Mumbai;”

3. The applicant has sought following reliefs in Interim Application No. 821 of 2020 reads as under:-

“a. This Hon’ble Court may be graciously pleased to send the Respondent no.2 to imprisonment for non-payment of arrears of maintenance amounting to Rs. 7,31,000/- with specific direction that he may not be released on remission or any other ground until he cleared all the arrears of Rs. 7,31,000/-

b. this Hon’ble Court may be graciously pleased to remand the Respondent no.2 to any jail except Talaja jail as he has been convicted for two years instead of four years and also granted unjustified remission of 156 days and released without payment of arrears of Rs. 7,31,000/-;”

4. The proceedings under Section 12 of the Domestic Violence Act are pending before the Court of Metropolitan Magistrate, 72nd Court, Vikhroli, Mumbai. The proceedings are numbered as C.C. NO.08/DV/2013. The petitioner preferred an application on 18.09.2018 for directing the employer of respondent to deduct of amount of Rs. 5,00,000/- from the Provident Fund of the respondent and credit the same to her bank account. The said application was rejected by order dated 11.01.2019. The petitioner had also preferred an application for

issuing arrest warrant against the respondent no.2 for recovery of amount of Rs. 7,31,000/-. By order dated 17.02.2018 the respondent no.2 was directed to suffer simple imprisonment of 24 (Twenty-four) months for default of payment of maintenance of 43 months for an amount of Rs. 7,31,000/-. He be released if sooner amount of Rs. 7,31,000/- is paid by him. The Court also issued conviction warrant. The petitioner had preferred an application for school fees of minor son for senior KG. Vide order dated 29.11.2017, the respondent was directed to pay an amount of Rs. 1,30,180/- in the account of the petitioner and also directed to pay other expenses required for extra curricular activities, sports, as and when demanded by the school. He was directed to pay Rs.1500/- for annual day function of the minor for the year 2016-2017 and Rs. 750/- per year. The petitioner had preferred an application to issue show cause notice for non-compliance of order dated 12.11.2018 and seeking direction to BEST Employees Co-operative Credit Society Ltd. to pay cost of Rs. 10,000/- for mental harassment. Vide order dated 10.01.2019 the learned Metropolitan Magistrate directed to

deduct the amount of Rs. 1,18,780/- from the account of Monthly Saving Deposit of respondent no.2 and credit it directly in the Saving Account of the petitioner maintained in the Bank of Maharashtra.

5. Learned counsel for the petitioner submits that the LIC policies are due to mature and hence grant of prayer clause “a” in the petition does not arise. It is submitted that the respondent No.2 was undergoing imprisonment at Taloja Jail and therefore, the petitioner had no option but to pay for school fees from provident fund. The application was rejected by the trial Court. The petitioner filed Criminal Appeal No. 125 of 2019 against the said order. The appeal was disposed of confirming the impugned order. The petitioner filed fresh application for school fees. The respondent no.2 was convicted for non-payment of arrears of maintenance on 09.09.2011. He was released although he had not paid the money.

6. In this petition and the application, the petitioner has also prayed for direction to respondent no.2 to pay the amount of Rs. 7 lacs towards school fees.

7. Respondent No.2 had filed common affidavit in reply in Writ Petition No. 1689 of 2019 and Writ Petition No. 770 of 2021. In reply, he had denied the allegations. In the reply, it is stated that the petitioner suppressed the material facts. The petitioner has filed several applications in the said matter. The complaint under the Domestic Violence Act was initially filed before the Metropolitan Magistrate Vikroli Court. Subsequently, it was transferred to Court of Magistrate at Kurla. In reply, it is also stated that the bank account indicates that the payments credited to the petitioner while the respondent was in jail, total amounting to Rs.9,12,031/- including payment credited from HDFC Life Insurance & LIC Policy. The respondent no.2 has complied direction in Writ Petition (St.) No. 6462 of 2020 for an amount of Rs. 39,000/-. The petitioner had received maintenance of Rs. 39,000/- per month from the Saving of respondent no.2. He has no other source of income. As per order of the learned Magistrate dated 16.11.2021, the amount of Rs. 7,31,000/- was deducted by the learned Magistrate from the arrears of maintenance.

8. These proceedings were initially heard on 12.04.2022. Both sides were heard. Learned counsel for the petitioner, however, sought time to argue in rejoinder and hence the proceedings were adjourned to 21.04.2022. Thereafter, the assignment had changed. Now, as per assignment, the matter is listed before this Court. Learned Advocate for the petitioner was heard on 13.06.2022 and the proceedings were kept today for passing order. The Advocate for respondent No.2 was not present on 13.06.2022 and today.

9. In the light of the various proceedings and the documents on record, the prayers sought in this petition and interim application, it would be appropriate for petitioner to move Court where the proceedings are pending. The petitioner is at liberty to prefer appropriate proceedings before trial Court for recovery of Rs.7,31,000/-, if any. It may not be construed that this Court has made any observations on merits with regard to the recovery of Rs. 7,31,000/-. In the event the petitioner prefers an application with regard to non-payment of maintenance, if any,

before the trial Court the trial Court would decide it expeditiously.

10. It is clarified that this Court has not given any findings with regard to merit of the said contentions. Hence, I pass the following order.

ORDER

- (i) The prayers sought in this petition and in Interim Application, cannot be granted by this Court;
- (ii) The petitioner is at liberty to prefer appropriate proceedings before the appropriate Court;
- (iii) The petitioner is also at liberty to initiate appropriate proceedings for recovery of Rs. 7,31,000/-;
- (iv) In the event, the petitioner prefers an application with regard to non-payment of the maintenance, if any, the petitioner is at liberty to prefer appropriate application before the trial Court and in the event, such application is preferred, the trial Court shall decide it expeditiously;
- (v) Writ Petition No. 1689 of 2019 and Interim Application No. 821 of 2020, stand disposed of.

(PRAKASH D. NAIK, J.)