

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

CRIMINAL WRIT PETITION NO. 2192 OF 2022

Brijesh Mohansingh Tomar

...Petitioner

Versus

The State of Maharashtra and Anr.

...Respondents

Ms. Siddhi Vadake i/by Mr. Abhishek Singh, Advocate for Petitioner.

Ms. Purvi Sharma h/f Mr. Prashant D. Jadhav, Advocate for Respondent No.2.

Mr. Arfan Sait, APP for Respondent – State.

CORAM : PRAKASH D. NAIK, J.

DATE : 30th AUGUST, 2022.

P.C. :-

1. The Petitioner is challenging the order dated 25th March, 2022 passed by learned Additional Sessions Judge, Thane in Appeal No.86 of 2015 as well as order dated 16th October, 2014 passed by learned J.M.F.C. 7th Court, Thane in Miscellaneous Application No. 219 of 2013.

2. The marriage between Petitioner and Respondent No.2 was solemnized on 6th June, 2011. The Respondent No.2 had preferred M.A. No.219 of 2013 for several reliefs including maintenance and residence. The Application was preferred under Section 12 of Protection of Women from Domestic Violence (hereinafter referred as 'D.V. Act') for reliefs under Sections 16, 17, 18, 19, 21 and 22 of the said Act. The learned J.M.F.C. 7th Court,

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Thane issued summons to the Petitioner on 12th December, 2013. On 9th January, 2014 the learned Magistrate proceeded with the case without say against the Petitioner and the application was listed for recording evidence. On 16th October, 2014 the Petitioner appeared before the Court to fail file his say. The learned Magistrate allowed the application for maintenance and directed the Petitioner to pay Rs. 30,000/- per month to Respondent No.2 towards maintenance from the date of application.

3. The Petitioner preferred an appeal before the Sessions Court challenging the order dated 16th October, 2014. The learned Sessions Judge rejected the appeal vide order dated 25th March, 2022.

4. Learned Advocate for the Petitioner submitted that, the learned Sessions Judge has erroneously rejected the appeal. The Courts below to fail consider that the Petitioner did not file any reply, the Respondent No.2 did not bring any cogent material of evidence on record to prove her case. The allegations were vague. The Respondent No.2 did not file in supporting documents to prove her case of Domestic Violence. Though the Respondent No.2 has filed her affidavit in lieu of examination-in-chief, she did not file any documentary evidence to show the income of Petitioner. The

Respondent No.2 had filed to prove she had subjected to violence. The quantum of maintenance fixed by the Court is exorbitant and the same is without documentary evidence. During the pendency of appeal the Court had granted interim reliefs considering the issues involved in the appeal. The Respondent is educated lady. The Petitioner is daily wage workers. The Petitioner had requested his Advocate to take proper legal steps as he was unable to travel another states. The Petitioner failed to file any reply.

5. Learned Advocate for Respondent No.2 submitted that, there is no error in the impugned orders. The Court had assigned reasons by passing orders. In spite of opportunity available to the Petitioner, he did not file his say. The Petitioner was trying to frustrate the scope and object of the D.V. Act.

6. I have perused the documents on record. The learned Magistrate has noted the grievance of Respondent No.2 inflicted in her application and evidence. The factual matrix of the case indicated that the parents of Respondent No.2 spent of huge amount in the marriage. The Respondent No.2 was thrown out of the house alongwith her child. There was demand of dowry. The order dated 16th October, 2014 refers to the fact that the Petitioner had appeared in the proceedings and in spite of giving sufficient

time did not file say. Hence the matter proceeded *ex-parte*. The Respondent had filed her affidavit in lieu of examination-in-chief. The Respondent and Advocate did not appear for examination inspite of sufficient opportunity. Hence no cross order was passed. She did not file any documentary evidence to show income of Petitioner however, the Court directed that the maintenance of Rs.30,000/- be provided to her. The learned Sessions Judge while deciding the appeal preferred by the Petitioner had noted that the learned Magistrate had relied upon the oral evidence of Applicant on the point of income of her husband. Though, she could not produce any cogent material but it cannot be ignored that she has lived three years in the company of her husband. She has stated that her husband is having income of more than Rs.1,50,000/- to Rs.2,00,000/-. Considering the factual aspect of this matter, I do not find any reason to interfere the impugned orders. Hence, I pass the following orders.

ORDER

. Criminal Writ Petition No.2192 of 2022 is dismissed.

[PRAKASH D. NAIK, J.]