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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2539 OF 2019

Noorjahan Israr Shaikh

...Petitioner

V/s.

Israr Ahmed Shaikh & Anr.

...Respondents

Dr. Vipon B. Kumar a/w Mr. Trupti A. Bharadi and Mr. Krishna R. Dhadhi for Petitioner.

Mr. Vinit Jain i/by Mr. Ajay Talreja for Respondent No.1.

Ms. G. P. Mulekar, APP for the Respondent No.2.

CORAM : AMIT BORKAR, J.

DATE : OCTOBER 12, 2022

P.C.:

1. Rule. Rule is made returnable forthwith by consent of the parties.

2. The petition is by the wife arising out of an order of rejection of an application seeking a direction against the husband to deposit arrears of maintenance. The second application is for the issuance of a non-bailable warrant against the husband for non-payment of maintenance. The learned Magistrate has rejected both Applications by the impugned order.

3. The facts relevant to the adjudication of the issue involved are as under:

- (i). On 21st May 2009, the petitioner and respondent No.1 were married. They have a son aged seven years on the date of filing of the Petition.
- (ii). On 13th May 2016, the petitioner-wife filed an Application under Sections 12 and 23(2) of the Domestic Violence Act, 2005, before the Magistrate.
- (iii). On 1st August 2016, the application for maintenance was allowed directing the husband to pay the amount of Rs.30,000/- per month, including maintenance of Rs.15,000/- to the petitioner and Rs.5,000/- to the minor child-Rizwan and Rs.10,000/- towards rent of alternative accommodation.
- (iv). Order dated 1st August 2016 was challenged by the husband in Criminal Appeal No.100651 of 2017, and the learned Sessions Judge, by order dated 8th March 2018, partly allowed the Appeal directing the learned Magistrate to decide Interim Application filed by the wife after giving her opportunity of hearing. He further directed that the order payment of maintenance to the petitioner shall remain in force until the

Magistrate decides the matter.

(v). The petitioner, therefore, filed an Application seeking direction against the husband to deposit arrears of maintenance till the matter is heard as per the directions of the learned Sessions Court. However, the said application has been rejected by the impugned order by the learned Magistrate holding that the relief prayed in the application is contrary to the order passed by the learned Sessions Judge as there is no direction issued by the Sessions Judge for deposit of arrears of maintenance.

4. Having heard learned advocate for the wife and husband, the learned Magistrate has failed to exercise jurisdiction vested in it by law by rejecting the such application. Undisputedly order dated 1st August 2016 was in force. The husband cannot violate the order of maintenance with impunity. The non-compliance with the order of maintenance cannot be given a premium by adopting the hyper-technical view. Clause 3 of the operative part of the learned Sessions Judge is clear, wherein the learned Sessions Judge has observed that the order dated 1st August 2016 shall remain in force during adjudication afresh on the point of maintenance. If the husband is not obeying the order

of grant of maintenance, such conduct cannot be given premium by holding that in the absence of direction from the Sessions Judge, it is not obligatory on the learned Magistrate to decide the such application.

5. It is well settled that the order of grant of maintenance in favour of the wife has to be construed liberally to advance the purpose and object of the Domestic Violence Act 1881. In that view of the matter, in my opinion, the Magistrate committed an error of jurisdiction in rejecting the application for direction to pay arrears of maintenance.

6. The next order, which is the subject matter of challenge the Petition, is for restoration of the application for issuance of a non-bailable warrant against respondent No.1.

7. Since I have already held that the learned Magistrate failed to exercise jurisdiction vested in it. In my opinion, in case of failure on the part of the husband to pay maintenance as per the order of the Court for the execution of such order, the learned Magistrate is under obligation to take all necessary measures as are necessary to execute such orders. For the reasons stated above, hence, the following order is passed:-

- (i). The Application No.36 of 2018 is allowed.
- (ii). Husband is directed to pay 25% of the arrears of maintenance within four (4) weeks from today. The remaining 50% shall be paid within eight (8) weeks. The balance of 25% shall be deposited within six (6) weeks thereafter.
- (iii). If the husband fails to deposit the arrears of maintenance, the learned Magistrate shall consider an application for issuance of a non-bailable warrant against the husband.
- (iv). In case the learned Magistrate modifies the order of grant of interim maintenance, the rights of parties shall be governed in accordance with the modified order.

Rule is made absolute in the above terms.

(AMIT BORKAR, J.)