

Nikita

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

CRIMINAL REVISION APPLICATION NO.144 OF 2021

Anant Ramesh Pable	... Applicant
V/s.	
The State of Maharashtra and Anr.	... Respondents

Mr. Niranjan Mundargi a/w Keral Mehta for Applicant.

Mr. Rahul Kadam for Respondent.

Mr. Arfan Sait, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 21, 2023

P.C.:

1. The challenge in this application is to the order dated 4th February 2021, passed by Additional Sessions Judge-8 Pune, in Criminal Appeal No.74 of 2019. By the impugned order the Appellate Court set aside the order passed by learned Magistrate in a proceedings under the Protection of Women From Domestic Violence Act, 2005 holding that the learned Magistrate has no power to grant relief in favour of husband for access to the child.

2. The learned advocate for the applicant invited my attention to the judgment of this Court in Criminal Application No.186 of 2018, dated 2nd November 2018, wherein this Court in paragraph No.19, held as under:-

“ 19. It was also observed that the application filed under Section 21 of the Domestic Violence Act seeking interim custody is maintainable before a Magistrate exercising jurisdiction in relation to area where family Court is established and the Magistrate has jurisdiction to decide such an application in accordance with law. Irresistible conclusion further would be that the application filed under Section 21 before the Court of judicial Magistrate First Class Amravati in the instant case is tenable and impugned order cannot be assailed on the ground of want of jurisdiction.”

3. The learned advocate for the respondent opposed the criminal revision application by contending that the impugned order is in suspicion with the provisions of the Protection of Women From Domestic Violence Act, 2005.

4. Since the learned Single Judge of this Court has already taken a view that in a proceedings under the Domestic Violence Act, the husband is entitled to relief of interim custody. The Appellate Court was not justified in setting aside the order of the Magistrate.

5. For the aforesaid reasons, the Criminal Revision Application succeeds.

6. The Criminal Revision Application is allowed in terms of prayer clause (3).

(AMIT BORKAR, J.)