

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

CRIMINAL APPLICATION NO.549 OF 2017

Rajkumar Sethi & Ors.

.... Applicants

versus

The State of Maharashtra & Anr.

.... Respondents

.....

- Mr. Rizwan Merchant a/w Gayatri Gokhale a/w Zainba Abdi i/b. Rizwan Merchant & Associates, Advocate for Applicant.
- Mr. M. G. Patil, APP for the State/Respondent No.1.
- Mr. Ashwin Shete a/w Santosh Avhad a/w Vidhi Kari i/b. Jayakar & Associates, Advocate for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 12th JULY, 2023

P.C. :

1. Heard Mr. Rizwan Merchant, learned counsel for the Applicant, Mr. Ashwin Shete, learned counsel for the Respondent No.2 and Mr. M. G. Patil, learned APP for the State. The Applicant No.1 and the Respondent No.2 are present in the Court to instruct their respective counsel.

2. The matter arises out of the proceeding filed by the

Respondent No.2 in complaint No.46/DV/2015 before the Metropolitan Magistrate, 67th Court, Borivali, Mumbai, under the provisions of the Protection of Women from Domestic Violence Act, 2005 (for short 'D.V. Act'). Though the proceedings are filed in the year 2015 they are still dragged on and the parties are still fighting over the interim orders passed by the learned Magistrate and the learned Additional Sessions Judge.

3. At the first instance, by way of an interim order learned Magistrate on 03/02/2016, directed the husband i.e. the Applicant No.1 in this application before this Court, to pay Rs.15,000/- per month to the Respondent No.2 herein i.e. the wife and Rs.10,000/- to their son Arnav from the date of the application. For the sake of convenience the parties are referred as husband and wife wherever necessary.

4. That order was challenged by the wife before the Court of Sessions by way of Criminal Appeal No.47 of 2016 for enhancement of interim maintenance. Learned Additional

Sessions Judge vide his order dated 25/04/2017 modified the Magistrate's order and the husband was directed to pay Rs.30,000/- per month to the wife and Rs.20,000/- per month to their son from the date of the application. By way of further reliefs the husband was restrained from dispossessing or in any way disturbing the possession of the wife in Flat No.3203/B, Imperial Heights, Motilal Nagar, Goregaon (W), Mumbai, or from restraining her entry in that flat. In the 3rd clause, the learned Judge directed the husband to provide alternate accommodation, if the wife did not wish to reside in that flat.

5. This order of the Additional Sessions Judge is challenged by the husband and his parents before this Court in the present Application. Both the learned counsel for the contesting parties agree that instead of keeping the matter pending for consideration on interim relief, the main matter before the Magistrate itself can be decided based on the evidence to be led by both the parties by keeping their contentions open.

6. Mr. Merchant appearing for the husband and his parents i.e. the present Applicants made submissions on certain aspects . It is made clear that those submissions are recorded in the Court in presence of both the parties and their learned counsel. Those are as follows:

- (1) The Applicant No.1 is ready to abide by the order of the Sessions Court and pay Rs.50,000/- per month to the wife and their son from August 2023 till disposal of the proceeding before the Trial Court.
- (2) Status-quo shall be maintained qua the residence/alternate accommodation until the decision of the Magistrate.
- (3) The Magistrate be directed to decide the main proceedings within a period of six months and in that case the Applicant shall not press the present application.

7. Mr. Merchant submitted that the Applicant No.3 has filed her own complaint under the DV Act against the

Respondent No.2 wife. The said proceedings are pending before the same learned Magistrate vide DV/4276/2014. He submitted that even this application can be decided with the proceedings initiated by the Respondent No.2, the wife.

8. Mr. Merchant further submitted on instructions that the husband shall pay an amount of Rs.7 lakhs to the wife within a period of four months as part of the arrears.
9. Mr. Merchant further submitted on instructions that the husband shall continue to pay the school fees and the tuition fees for their son directly to the school authorities.
10. There is another issue of making payment of arrears. On this issue the parties are not in agreement regarding the exact amount of arrears. Except this issue the parties are agreeable to all the other suggestions made by Mr. Merchant on behalf of the Applicants.

11. Learned counsel Mr. Shete appearing for the wife is agreeable to this course of action. However, he disputes the exact amount of arrears. His submission is that all the contentions be left open and the disputed amount of arrears shall be left to be decided by the Magistrate when the proceedings are finally decided by him.

12. The stand taken by both the learned counsel is reasonable and therefore this application can be disposed of by giving suitable directions to the learned Magistrate. Since I am inclined to direct the learned Magistrate to conclude the proceeding before him within a period of six months, Mr. Merchant, appearing on behalf of the Applicant, does not press this application.

13. Hence, the following order :

ORDER

- (i) The learned Metropolitan Magistrate, 67th Court,

Borivali, Mumbai is directed to decide and conclude the complaint No.46/DV/2015 within a period of six months from today.

- (ii) The learned Magistrate shall also decide and conclude the other proceeding initiated by the Applicant No.3 herein, which is pending before him vide DV/4276/2014 within a period of six months from today.
- (iii) Both these proceedings shall be heard and decided together.
- (iv) All the contentions raised by both the parties in all the proceedings are specifically left open to be decided by the Magistrate at the final stage.
- (v) The Applicant No.1 shall continue making the payment as directed by the learned Additional Sessions Judge, in Criminal Appeal No.47 of 2016, from August 2023 onwards till conclusion of the proceedings before the learned Magistrate.
- (vi) There shall be status-quo as of today in respect

of the residence/alternate accommodation as far as the Respondent No.2 wife is concerned.

- (vii) The Applicant No.1 shall continue to pay the school fees and the tuition fees for their son directly to the authorities.
- (viii) Learned Magistrate shall also decide the question of disputed amount of arrears while passing the final order.
- (ix) As submitted by Mr. Merchant the Applicant shall pay Rs.7 lakhs to the Respondent No.2 wife within a period of four months from today.
- (x) With these directions, the application is disposed of.

(SARANG V. KOTWAL, J.)