

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1499 OF 2016

Sandesh Govind Kadam .. Applicant
Versus
Sashikala @ Yasmin Sandesh Kadam .. Respondents
and anr

...

Mr. D.R. Kushwaha for the applicant.
None for the respondent
Mr. Y.M. Nakhawa, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 6th APRIL 2023

P.C:-

1 Heard the learned counsel for the applicant. None present for the respondent though served.

The applicant is the husband, who is aggrieved by a limited directions issued by the Metropolitan Magistrate, upon an application filed by the respondent wife under Section 12 of the Protection of Woman from Domestic Violence Act.

The learned counsel fairly state that he did not question the order dated 10/07/2013, which had directed maintenance of Rs. 2000/- to be paid to the wife as well as the order directing him to pay rent of Rs. 600/-.

He make a categorical statement that till date he is abiding by the said order except for the lapses, which are committed recently on account of his hospitalization. However, the learned counsel undertake that he shall make good his fault and pay the arrears of maintenance allowance as well as the rent within a period of 8 weeks from today.

2 The applicant is aggrieved by the direction issued by the Magistrate for return of the gold ornaments of the wife, to her within a period of 6 months and a direction to the effect that if there is a failure, she would be entitled to recover it from him, on the basis of the order.

This order has been upheld by the Additional Session Judge, greater Mumbai, on 25/8/2016 by dismissing the appeal.

3 When the basis of this order is tracked, it can be seen that the applicant's wife in her examination-in-chief in lieu of oral evidence, made a categorical statement as under:

11 “ I say that my ornaments in a custody of Respondent. The details of my ornament henceforth; 1. Ear ring 15 gm, 2. Neckless 15gm, 3. Mangalsutra 25 gm, 4. Ring 5 gm, all gold ornaments. Respondent refuse to handover my ornaments.”

4 This statement was specifically denied by the respondent by filing a reply, though he admitted that the ornaments were presented by him to the applicant's wife, they were taken back from her and used by him for the purpose of obtaining loan for the marriage of his son arranged on 4/2/2011

and the submission of the learned counsel, at the relevant time and even today is since the money was needed for the performance of marriage, the gold ornaments have been put to use.

Dealing with the said statement, the JMFC did not find it to be a justiciable explanation and issued the direction to return the gold ornaments.

5 As far as the above direction is concerned, it can be noticed except the bald statement of the wife about the ornaments, nothing has been brought on record to establish that these particular ornaments mentioned by her in the evidence affidavit were gifted to her and there was a refusal to return them. Though the respondent husband has candidly admitted that some of the ornaments are put to use, for the purpose of marriage of his son, the direction to return the ornaments and a further direction, that if there is no compliance, then forcible recovery, of the same, can be sustained, for the reason below.

Section 12 of the Protection of Woman from Domestic Violence Act, which is in form of relief which can be sought by the aggrieved woman before the Magistrate, would extend to a relief for issuance of payment of compensation or damages as well as the amount of maintenance, considering the situation of the aggrieved person and upon an application being made for grant of maintenance. The application is preferred by the wife under Section 12 of the Act and the order is passed on

this very application. In my considered opinion, the learned Magistrate has exceeded his power in directing return of the gold ornaments without any proof being adduced about details of the ornaments and that, they were in possession of the husband.

The said direction, therefore, cannot be sustained and the impugned order passed by the Magistrate to the extent of clause no. (d) in the order dated 10/7/2013 is quashed and set-aside.

6 Similarly the order passed by the learned Additional Sessions Judge on 25/8/2016 which must also meet the same fate.

Criminal Application No.1499/2016 stands allowed in the aforesaid terms. No order as to costs.

(SMT. BHARATI DANGRE, J.)