

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

CRIMINAL WRIT PETITION NO.4931 OF 2022

Shahista Shoyeb Khan & Anr.

.... Petitioners

versus

Shoyeb Bashir Khan & Ors.

.... Respondents

.....

- Mr. Sudhanva S. Bedekar, Advocate for Petitioners.
- Mr. Rajan S. Pawar a/w Gaurav Ugale, Advocate for Respondent Nos. 2 to 4.
- Mr. N. B. Patil, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 10th AUGUST, 2023

P.C. :

1. The office note shows that in this matter the Respondent No.1 is duly served. The Respondent Nos.2, 3 and 4 are represented by an Advocate.

2. The Petitioners were the original complainant in Criminal Miscellaneous Application No.16 of 2019 before the Judicial Magistrate First Class, Nashik Road. The proceedings

were under the provisions of the Protection of Women under the Domestic Violence Act, 2005.

3. At the first instance, the learned Magistrate, vide order dated 09/09/2019 granted protective orders including the monthly maintenance to the Petitioners. The Respondents did not appear before the Magistrate and the final order was passed exparte. That order was challenged before the Additional Sessions Judge, Nashik in Criminal Appeal No.16 of 2021.
4. Learned Additional Sessions Judge, Nashik, vide his order dated 03/11/2022 set aside the Magistrate's order and the proceedings were remanded back to the Trial Court with directions to dispose of the proceedings afresh in accordance with law as expeditiously as possible and parties were directed to appear before the Trial Court on 28/11/2022. Therefore the Respondents had sufficient notice of this order.
5. Learned counsel for the Petitioners submitted that the learned Magistrate had passed order on 09/09/2019 and

thereafter it was set aside on 03/11/2022. The Petitioners are suffering for no fault of theirs. He further submitted that the Respondents did not appear before the learned Magistrate for a long period and ultimately the exparte order came to be passed. This circumstance, in fact, is in favour of the Petitioners. The prejudice is caused to her because of this setting aside of the order of learned Magistrate.

6. I have considered these submissions. Learned counsel for the Respondent Nos.2 to 4 submitted that the order of the learned Additional Sessions Judge does not suffer from any infirmity. Since the matter is now pending before the learned Magistrate and since both the parties now are getting an opportunity to put their case before the Trial Court, I am not inclined to interfere with the impugned order of the learned Additional Sessions Judge, Nashik. However, since the application is pending since 2019, the learned Magistrate can be directed to dispose of the proceedings within a time bound manner. The Petitioners are at liberty to prefer the applications

for interim relief in accordance with law under the provisions of the said Act.

7. Hence, the following order :

ORDER

- (i) The Judicial Magistrate First Class, Nashik Road, shall decide the Criminal Miscellaneous Application No.16 of 2019 within a period of five months from today.
- (ii) The Petitioners are at liberty to prefer the applications for interim relief in accordance with law under the provisions of the Protection of Women under the Domestic Violence Act, 2005.
- (iii) If such applications are preferred during pendency of the proceedings, those applications shall be decided in accordance with law.
- (iv) With these observations, the Petition is disposed of.

(SARANG V. KOTWAL, J.)