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IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.58 OF 2024

B. M. SUMAN

... PETITIONER

Versus

SHASHIKANTH BHAGAVAN AND ANR

... RESPONDENTS

Petitioner present in person.

Ms A. Kalokhe, Advocate for respondent no.1.

Mr G.Nagvekar, Addl. Public Prosecutor for State.

CORAM:- BHARAT P. DESHPANDE, J.

DATED :- 7th October, 2024

P.C.

Heard Petitioner in person and Ms A. Kalokhe, learned counsel for respondent no.1.

2. Present petition is filed challenging the order passed by the learned Magistrate in Domestic Violence Act Case No. 27/2019 below Exh. 28 on 14.6.2024. Petitioner submits that she filed an application for enforcement of the orders passed by the concerned Magistrate including the payment of maintenance per month which was not complied with by the respondent no.1.

3. Petitioner is aggrieved by the orders passed by the Magistrate directing to attach two motor vehicles belonging to the respondent no.1 for recovery of Rs.9,72,000/-.

Petitioner submits that said vehicles are old and are not having value

for recovery of more than 9 lakhs and even till date there is no attachment of it.

4. Ms Kalokhe appearing for respondent no.1 submits that she has challenged the said order before the District Court and the hearing is fixed today. She also submits that petitioner is having alternative efficacious remedy to challenge the impugned order by way of filing an appeal under Section 29 of the Domestic Violence Act, 2005.

5. Since the impugned order challenged in the present proceeding is arising out of DVA proceedings pending before the Magistrate and that too for recovery of arrears of maintenance, petitioner could be considered as aggrieved person as provided under Section 29 of the Domestic Violence Act, 2005. Accordingly, remedy to challenge such order is by way of filing an appeal before the Court of Sessions as provided under Section 29 of the Domestic Violence Act, 2005.

6. Since the petitioner is having alternative efficacious remedy, present petition cannot be entertained under Articles 226 and 227 of the Constitution of India.

7. Petitioner undertakes to file an appeal before Sessions Court challenging the present impugned order as provided under Section 29 of the Domestic Violence Act, 2005, within a period of one week. If such appeal is filed within one week, learned Sessions Court shall consider the fact that the petitioner was litigating before this Court under the bonafide belief that remedy available to her is by filing Writ Petition.

8. The appeal filed by the respondent challenging the impugned

order is fixed today. Ms Kalokhe undertakes to furnish a copy of memo of appeal to the petitioner today itself.

9. Learned Session Court is accordingly, directed to decide the appeal filed by the petitioner as well as the appeal filed by the respondent together and as expeditiously as possible since it is found that matter is pending from 2019 and petitioner is deprived of her maintenance granted by the learned Magistrate except making some part payment.

10. Learned Sessions Court should also consider that there is recovery of more than Rs.9,72,000/- which is pending at present. Accordingly, the present petition could be disposed of by allowing the petitioner to challenge the impugned order by filing appeal under Section 29 of the Domestic Violence Act, 2005 before the Sessions Court within a period of one week from today.

11. Both the appeals shall be clubbed together and be disposed of as early as possible and preferably within a period of two months.

12. With these observations, petition stands disposed of.

BHARAT P. DESHPANDE, J.