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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2230 OF 2024

1. Shilpesh Mukeshbhai Champaneria

Aged – 42 years, Occu-Doctor

2. Mukeshbhai Champaneria

Aged-65 years, Occu- Retired

3. Kailasben Mukeshbhai Champaneria

Aged-61 years, Occu-Housewife

All residing @ R/at : 12 Janak Park
Society, Near Badri Narayan Temple,
Old Adajan Road, Adajan, Surat,
Gujarat – 395 009

.....Petitioners

Vs.

1. Neetu Shilpesh Champaneria

Aged – 32 years, Occu – Not Known

R/at : 604, Kinjal Heaven, 8 Wadiya
Street, Tardeo Road, Tardeo,
Mumbai – 400 034

2. The State of Maharashtra

(Through the office the P.P.)

.....Respondents

WITH

WRIT PETITION NO. 2231 OF 2024

Neetu w/o Shilpesh Champaneria

Aged – 35 years, Occu – Housewife
R/at : 604, Kinjal Heaven, 8 Wadiya
Street, Tardeo Road, Tardeo,
Mumbai – 400 034

Vs.

1. Shilpesh Mukeshbhai Champaneria

Aged – 39 years, Occu-Business

2. Mukeshbhai Champaneria

Aged-65 years, Occu- Retired

3. Kailasben Mukeshbhai Champaneria

Aged-61 years, Occu - Housewife

All residing @ R/at : 12 Janak Park
Society, Near Badri Narayan Temple,
Old Adajan Road, Adajan, Surat,
Gujarat.

.....Respondents

Mr. Girish Kulkarni Senior Advocate i/b Mr. Kripashankar N. Pandey,
Ms. Mrunmai Kulkarni, Mr. Darshan Juikar for the petitioners in WP
No. 2230/2024 and for Respondent nos. 1 to 3 in WP No. 2231 of
2024

Ms. Shilpa G. Talhar, APP for respondent no. 2-State in WP No. 2230
of 2024

Mr. Harish Pandya a/w Mr. Mujtaba Shaikh i/b Mr. Rajendra Rathod for
Petitioner in WP No. 2231 of 2024 and for respondent no. 1 in WP No.
2230 of 2024

CORAM : GAURI GODSE, J.

DATE : 10th JUNE 2024

ORDER:

1. These petitions filed under Article 227 of the Constitution of India read with 482 of Code of Criminal Procedure, 1973 ("Cr.P.C.") challenge the order passed by the Sessions Court disposing of two appeals arising out of an order passed by the learned Magistrate granting interim maintenance pending the main proceedings under the Protection of Women from Domestic Violence Act, 2005 ("DV Act") initiated by respondent no. 1 ("respondent") in Writ Petition No. 2230 of 2023. Petitioner no. 1 in the said writ petition is respondent's husband. Petitioners nos. 2 and 3 are petitioner no. 1's parents. Respondent in the said Writ Petition has filed the cross Writ Petition No. 2231 of 2024. Parties are hereinafter referred to as their status in Writ Petition No. 2230 of 2023.

2. By an interim order passed below application at exhibit 3, the learned Magistrate granted interim relief in favour of the respondent, directing petitioner No. 1 to pay monthly maintenance to the respondent and two children and issued other directions with regard to

educational expenses. The said order also directed petitioner no. 1 to allow the respondent to reside in the shared household along with the children. Being aggrieved by the said order, the petitioners filed an appeal before the Sessions Court. The respondent also filed an appeal claiming enhancement of the maintenance amount. By the impugned Judgment and Order, both the appeals are decided. The respondent's appeal for enhancement for maintenance is dismissed, and the petitioners' appeal is partly allowed by modifying the order of maintenance. Hence, Writ Petition No. 2230 of 2024 is filed by the original respondents in the DV proceedings and the connected Writ Petition No. 2231 of 2024 is filed by the original applicant.

3. Learned senior counsel appearing for the petitioners submitted that the respondent, i.e. the original applicant, is not the legally wedded wife of petitioner no. 1 and would not fall within the definition of section 2(f) of the DV Act and, therefore, would not be entitled to seek any relief against the petitioners. With reference to the order passed by the appellate Court, he submitted that if, in law, the respondent is not entitled to seek any relief under the DV Act, there is

no question of granting any interim relief pending the main application under the DV Act. He submitted that the issue involved in the present petitions is covered by the decision of the Hon'ble Supreme Court in the case of *Indra Sarma Vs V.K.V. Sarma*¹. He thus submitted that there is no question of entertaining any application filed by the respondent under the DV Act, and there is no question of granting any interim relief.

4. Learned counsel for the respondent pointed out that the petitioners had filed an application for dismissal of the main DV proceedings on the same ground that the respondent would not fall within the definition of section 2(f). He submitted that the said application was allowed, and the main application filed by the respondent was dismissed. Hence, the respondent had preferred an appeal before the Sessions Court, which was allowed and the main case was directed to proceed in accordance with the law. Feeling aggrieved by the said order, the petitioners filed Criminal Writ Petition No. 592 of 2021 in this Court. However, on 12th August 2022, the petition was withdrawn with a request to clarify that the Trial Court

¹ (2013) 15 Supreme Court Cases 755

should decide the case in accordance with law and merits.

5. The learned counsel for the respondent pointed out that this Court vide order dated 12th August 2022 permitted the petitioners to withdraw the said petition, and all the issues were kept open, directing the Trial Court to decide the main case in accordance with the law. He, thus, submitted that it is not now open for the petitioners to argue, at this stage, that the respondent is not covered under the definition of section 2(f) of the DV Act and, therefore, not entitled to any interim relief. He submitted that the said issue can be decided in the main DV proceedings, which are still pending, and in view of the order dated 12th August 2022, the petitioners are not entitled to refuse to comply with the interim relief granted in favour of the respondent.

6. With reference to the order dated 12th August 2022, learned senior counsel for the petitioners submitted that this Court had directed the Trial Court to decide the case in accordance with law and merits and further directed to decide the interim application filed by the respondent seeking interim maintenance expeditiously. He, therefore, submitted that the petitioners again went back to the Trial Court and

argued the law point by relying upon the decision of the Hon'ble Supreme Court in the case of *Indra Sarma*. He thus submitted that once the legal issue on the point of applicability of section 2(f) is settled by the Hon'ble Supreme Court and the law is applicable to this case, the respondent is not entitled to any relief in the DV proceedings.

7. I have perused the papers and considered the submissions made by the parties. A perusal of the order dated 30th March 2021 passed by the learned Magistrate in the main case indicates that the main application under section 12 of the DV Act was filed by the petitioners on the ground that the respondent is not covered under the definition of "domestic relationship" as contemplated under section 2(f) of the DV Act. Thus, the legal principles sought to be argued today were decided by the learned Magistrate and the main application was dismissed. However, the said dismissal was challenged by the respondent before the Sessions Court, and by order dated 11th October 2021, dismissal of the main case was set aside by rejecting the petitioners' application at Exhibit 30. Sessions Court directed that the main criminal case shall proceed in accordance with the law.

8. The said order was challenged by the petitioners in this court, and the same was disposed of as withdrawn by order dated 12th August 2022. Learned counsel for the respondent is right in submitting that the legal issues sought to be argued today were withdrawn by the petitioners, and hence, the Trial Court was directed to decide the main case in accordance with the law. For the sake of a better understanding of directions issued by this court on 12th August 2022, the order is reproduced as under:

“1. This Court was not inclined to grant relief.

2. Learned Counsel for the Petitioners on instructions, seeks permission to withdraw this Petition. However, it is submitted that it may be clarified that the trial Court shall decide the case in accordance with law and merits without being influenced by this order.

3. In view of this submissions, the Petition is allowed to be withdrawn and stands disposed of accordingly.

4. All issues are kept open. The trial Court shall decide the case in accordance with law and on merits.

5. The Interim Application preferred by Respondent No. 1 seeking interim maintenance shall be decided

expeditiously, within a period of four weeks from the date of receipt of this order.”

9. A perusal of the said order clearly indicates that the petitioners had withdrawn the challenge raised on the dismissal of the main case by relying upon the definition of section 2(f). In view of the withdrawal, this Court kept all the issues open and directed the Trial Court to decide the case in accordance with the law and on merits. Since the said petition disposed of as withdrawn on 12th August 2022 was arising out of objections raised by the petitioners for dismissing the main case, it is obvious that this Court had directed to decide the main case in accordance with law and on merits by keeping all the issues open. This court had further directed that the interim application seeking interim maintenance shall be decided expeditiously. Hence, in view of the aforesaid order, there is no question of again re-agitating the legal point based on section 2(f) as sought to be argued by the learned senior counsel for the petitioners at this stage. In view of the earlier orders on the said preliminary objection and the observations by this Court in the order dated 12th August 2022, I am not inclined to

entertain the arguments on objection on the same point for challenging the order of interim maintenance.

10. A perusal of the order passed by the learned Magistrate indicates that all the documents produced on record by the parties regarding the assets and liabilities were taken into consideration. The affidavit disclosing assets and liabilities of petitioner no. 1 are discussed in detail by the learned Magistrate. After considering the rival contentions, the learned Magistrate had granted interim maintenance to the respondent and two children. By the impugned Judgment and Order passed by the Sessions Court, the interim maintenance order is modified, to the extent of granting maintenance to the daughter on the ground that she is born from the respondent's first husband. Sessions Court, in the impugned order, has considered rival contentions of the parties with regard to the daughter being born from the first marriage of the respondent. It is not in dispute that the respondent was earlier married, and after separating from her husband, her relationship was developed with petitioner no. 1. So far as the son is concerned, petitioner no. 1 has not disputed that he is the

child born out of the relationship of petitioner no. 1 and the respondent. Hence, considering the rival contentions and the documents produced on record, the Sessions Court found it fit to modify the interim order only to the extent of maintenance granted to the daughter. A perusal of the record indicates that the relationship with the daughter is disputed. However, the relationship between petitioner no. 1 and the respondent is not disputed except for the arguments raised based on the definition under section 2(f). Thus, considering the relationship between petitioner no. 1 and the respondent as well as the son born out of the relationship, the Sessions Court has refused to interfere with the interim maintenance granted to the respondent and the son.

11. Since the relationship between the petitioner and respondent no. 1 and the son born out of their relationship is not disputed, I do not see any reason to interfere in the impugned order so far as the interim maintenance granted to the respondent and the son is concerned.

12. So far as Writ Petition No. 2831 of 2024 filed by the respondent is concerned, learned counsel for the respondent argued that the affidavit of assets and liabilities filed by petitioner no. 1 shows the

higher income. Hence, the respondent would be entitled to higher interim maintenance. He pointed out the affidavit that petitioner no. 1 had shown his parents and his first wife as employees to reduce his net income. He submitted that even if the relationship between the daughter is disputed by petitioner no. 1, at this stage, petitioner no. 1 would be liable to pay interim maintenance as he has not disputed the relationship with the respondent.

13. A perusal of the affidavit of assets and liabilities shows that petitioner no. 1 has disclosed his income as well as his liabilities. Learned Magistrate, as well as the Sessions Court, have examined the rival contentions of the parties by taking into consideration the documents on record available for modifying the figures for grant of interim maintenance. The arguments raised on behalf of the respondent for enhancement of maintenance and grant of maintenance to the daughter would be required to be considered after a full-fledged trial, which is still pending before the learned Magistrate. Since this petition arises out of an interim maintenance order, all the contentions of the parties are required to be taken into consideration

on a prima facie opinion. Both the courts have arrived at a prima facie opinion, and in view of the impugned order, the grant of interim maintenance to the respondent and the son stands confirmed.

14. Considering the aforesaid, I am not inclined to entertain both petitions as I do not see this as a fit case to entertain by exercising powers under Article 227 of the Constitution of India or Section 482 of Cr.P.C. as the main proceedings are still pending. Needless to clarify that the arguments raised on behalf of the petitioners with regard to legal principles settled by the Hon'ble Supreme Court in the case of ***Indra Sarma*** shall be decided on merits by the learned Magistrate in the DV proceedings in view of the order dated 12th August 2022. It is further clarified that dismissal of these petitions would not come in the way of the parties to raise their rival contentions in the main proceedings, and the observations in this order are prima facie opinion for examining the impugned order passed at an interim stage.

15. Except for the arguments made by relying upon the decision in the case of ***Indra Sarma***, no other objection is raised on the quantum of interim maintenance.

16. Needless to record that the petitioner no. 1 is expected to comply with the impugned order by making payment of interim maintenance as directed in the impugned order. It is open for the respondent to take appropriate steps for recovering the arrears of interim maintenance, if any.

17. Learned counsel for the respondent submits that so far as the educational fees of both the children are concerned, directions issued by the learned Magistrate are not disturbed by the Sessions Court. He submits that though specific directions are issued, petitioner no. 1 has failed to comply with the directions issued by the learned Magistrate for making payment towards educational fees and expenses of the children. Learned counsel for the respondent is right in submitting that clause (c) of the order passed by the learned Magistrate is not disturbed by the impugned order passed by the Sessions Court. Hence, it is clarified that if the directions in clause (c) are not complied with, the respondent is at liberty to adopt proceedings as permissible in law. Respondent is also at liberty to seek necessary directions for compliance with clause (c) of the order of the learned Magistrate by

filing an appropriate application as permissible in law before the learned Magistrate in the pending proceedings. If any such application is filed, the same shall be decided on its own merits and in accordance with law.

18. For the reasons recorded above, both the petitions are dismissed with the aforesaid clarification.

[GAURI GODSE, J.]

IRESH
MASHAL

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