

Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3439 OF 2024

Nirmala Vijay Saroj

.....Petitioner

Vs.

State of Maharashtra and Ors

.....Respondents

IRESH
MASHAL

Mr. Diip Shukla a/w Ms. Priya Pandey for the petitioner

Mr. Vikas Tiwari a/w Mr. Gopal Singh for respondent nos. 2 to 9

Ms. S. K. Gajare APP for the respondent-State

Digitally
signed by
IRESH
MASHAL
Date:
2024.08.22
18:26:51
+0530

CORAM : GAURI GODSE, J.

DATE : 21st AUGUST 2024

ORDER:

1. This petition is filed for the limited purpose of seeking interim protection on the ground that, in view of the order passed by the learned Magistrate on 8th May 2024, the petitioner and her son are likely to be dispossessed from the shared household.

2. Learned counsel for the petitioner submits that on 6th June 2023, the petitioner's application at Exhibit 12 seeking interim relief was allowed, restraining the respondents nos. 2 to 9 ("respondents") from disturbing the petitioners' and her son's possession in the shared

household. The order further restrained the respondents from entering into the shared household. Since the said application was an ex-parte order, respondents filed an application at Exhibit 36 for setting aside the ex-parte order and for hearing the application for interim maintenance at Exhibit 12 afresh. The said application at Exhibit 36 filed by the respondents is allowed by the learned Magistrate on 8th May 2024. By the said order, ex-parte order of interim relief passed in favour of the petitioner is set aside, and the application at Exhibit 12 is listed for arguments. This order dated 8th May 2024 is challenged by the petitioner by filing Appeal No. 339 of 2024 before the Sessions Court. It is the petitioner's case that in the said application, the petitioner prayed for interim protection. However, no protection was granted, and the appeal was listed for hearing on 9th July 2024. Learned counsel for the petitioner submits that the next date of hearing of the appeal before the Sessions Court is 31st August 2024.

3. Learned counsel for the petitioner further submits that the petitioner resides in the shared household with her son, who has recently turned 18 years of age. Learned counsel for the petitioner submits that in view of the order dated 8th May 2024, interim protection passed in favour of the petitioner stands vacated and hence, the

petitioner and her son are likely to be dispossessed at the hands of the respondents. He, therefore, submits that the present petition is filed for a limited purpose for the grant of interim protection till the application for interim relief is heard by the Sessions Court.

4. Learned counsel for the respondents raises a preliminary objection to the maintainability of the petition. He submits that the prayer in the present petition only seeks a stay to the order dated 8th May 2024 and similar prayer is also made before the Sessions Court. Therefore, he submits that the petition is not maintainable.

5. I have considered the submissions made by both parties. I have perused the papers of the petition. Considering the short point involved in the petition, the petition is taken up for final disposal.

6. Though in the petition, the prayer is made for stay of the order dated 8th May 2024, the grounds raised in the petition indicate that the petition is filed for a limited purpose to protect the petitioner's and her son's possession in the shared household. It is not in dispute that the interim protection was passed in favour of the petitioner on 6th June 2023, and the same was operative till 8th May 2024. The said order was set aside on the ground that it was an ex-parte order, and the

application is kept for a fresh decision. The petitioner is entitled to challenge the order dated 8th May 2024; hence, she has filed the appeal before the Sessions Court. Since there is no dispute that there was an interim protection in favour of the petitioner and her son regarding the shared household, the petitioner would be entitled to an interim protection until the Sessions Court hears her application.

7. Since the appeal challenging the order dated 8th May 2024 is pending before the Sessions Court, I do not find it appropriate to examine the rival contentions of the parties on the order dated 8th May 2024. However, considering the peculiar facts of the case, I do not see any reason why interim protection for a limited period should not be granted to the petitioner and her son residing in the shared household. In view of the rival contentions of the parties and the orders passed in the proceedings, prima facie, I am of the opinion that serious prejudice and hardship would be caused to the petitioner and her son if they are dispossessed from the shared household at this stage.

8. Learned counsels for the parties submit that before the Sessions Court, the main appeal, as well as the application for interim relief, is scheduled on 31st August 2024. Learned counsel for the respondents submits that by taking undue advantage of the interim protection, the

petitioner would not argue the appeal on merits. Hence, he submits that the petitioner be directed to argue her appeal as well as application on the next date.

9. There is nothing on record to show that the petitioner has avoided arguing the appeal on merits. However, learned counsel for the petitioner submits that the petitioner will argue her appeal and application for interim relief as and when they are taken up for hearing. He further submits that the petitioner will not seek any adjournment on the scheduled date.

10. In view of the aforesaid, this is a fit case to exercise powers under Article 227 of the Constitution of India. Hence, the petition is allowed by passing the following order:

ORDER

I. Till the petitioner's application for interim relief in Criminal Appeal No. 339 of 2024 is heard, the petitioner and her son shall not be dispossessed from the shared household, and the respondents shall not enter the shared household.

II. The petitioner is at liberty to file appropriate application for interim relief before the Sessions Court on the next date.

III. If an appropriate application for interim protection is filed, the learned Sessions Judge shall consider it on its own merits, uninfluenced by this order.

IV. It is clarified that all rival contentions of the parties on merits are kept open.

11. The writ petition is allowed in the aforesaid terms.

[GAURI GODSE, J.]