

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1191 OF 2025

Sachin Rajendra Garg

...Petitioner

Versus

The State of Maharashtra & Anr.

...Respondents

Mr. Tejas Mane, for the Petitioner.

Ms. S. G. Talhar, APP for the Respondent – State.

CORAM: MADHAV J. JAMDAR, J.

DATED: 19th MARCH 2025

P.C.:

1. Heard Mr. Tejas Mane, learned Counsel appearing for the Petitioner and Ms. S. G. Talhar, learned APP for the Respondent – State.

2. In the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the Order dated 14th June 2024 passed by the learned Additional Sessions Judge, City Civil and Sessions Court, Borivali Division, Dindoshi, Mumbai in Criminal Appeal No.160 of 2023. By the impugned Order dated 14th June 2024, the learned Additional Sessions Judge allowed said Criminal Appeal No.160 of 2023 and quashed and set aside Order dated 24th March 2023 passed by the learned Metropolitan Magistrate, 17th Court, Borivali, Mumbai below Exhibit-26 in C.C. No.14/DV/2018. By the said Order dated 24th March 2023 the learned Metropolitan Magistrate has set aside the interim Order dated 20th July 2019 passed by the learned Metropolitan Magistrate, 17th Court, Borivali, Mumbai below Exhibit-1 in C.C. No.

14/DV/2018.

3. The perusal of the record shows that the Petitioner and the Respondent No.2 married as per Hindu Rites on 20th June 2011. Out of the said wedlock there is a child. The Respondent No.2 had filed proceedings under the provisions of the *Protection of Women from Domestic Violence Act, 2005* (“**DV Act**”) bearing C.C. No.14/DV/2018. In the said DV proceedings, Order dated 20th July 2019 was passed by the learned Metropolitan Magistrate, 17th Court, Borivali, Mumbai directing present Petitioner not to subject Respondent No.2 to domestic violence and further, Petitioner has been directed to pay Rs.20,000/- per month for the maintenance of the Respondent No.2 and Rs.10,000/- per month for the maintenance of the child. In the said Order dated 20th July 2019 the learned Metropolitan Magistrate has specifically observed that the present Petitioner was duly served, however, he remained absent and therefore on 1st December 2018, the order was passed against the Petitioner to proceed without his say. It is observed in the said order that Respondent No.1 remained absent despite information of the matter.

4. The Petitioner filed an Application bearing Exhibit-26 seeking setting aside the said Order dated 20th July 2019. The said Application has been allowed by Order dated 24th March 2023 passed by the learned Metropolitan Magistrate, 17th Court, Borivali, Mumbai by very

cryptic order. The said Order dated 24th March 2023 reads as under :-

“I have read the application and say at Exh. 31. it is a matter of record that this matter had proceeded ex-parte against the respondent and ex-parte interim order was passed against respondent no. 1 on 20.07.2019. Now he wants to defend the matter including the application for interim reliefs. It is always desirable that an application or a matter is decided on merits. It enables both the sides to put forth their cases before the Court which is the basic part of fair trial. Therefore, I find it justifiable to revoke the ex-parte interim order passed in this case. Hence, the order.

ORDER

1. Application is allowed subject to the cost of Rs. 1,000/- to be paid to the original applicant.
2. The ex-parte interim order passed on 20.07.2019 hereby set aside.
3. Both the parties are directed to proceed with the hearing of the interim application on the next date without fail.”

(Emphasis added)

It is only mentioned in the said order that although the matter proceeded against the Petitioner *ex-parte* however, now the present Petitioner wants to defend the matter and therefore, it is desirable that the matter be decided on merits.

5. It is significant to note that the learned Metropolitan Magistrate has not considered the reasons why the Petitioner has remained absent in spite of service of notice before the learned Metropolitan Magistrate in said proceedings when said Order dated 20th July 2019 has been passed.

6. The Respondent No.2 challenged said Order dated 24th March

2023 by which Order dated 20th July 2019 is set aside, before the learned Sessions Court at Dindoshi by filing Criminal Appeal No.160 of 2023. The learned Additional Sessions Judge while setting aside the Order dated 24th March 2023 has observed that there is no specific and detailed reasons mentioned in the Order dated 24th March 2023 as to why Order dated 20th July 2019 is required to be set aside by the learned Metropolitan Magistrate. It is further observed that there is no specific reason to set aside the Order of the learned Metropolitan Magistrate dated 20th July 2019. It is further observed that the Respondent No.2 and child is totally dependent on the income of the Respondent No.2. The reasons given are valid reasons.

7. Accordingly, no interference in the impugned order is warranted under the jurisdiction of this Court under Article 227 of the Constitution of India. The Criminal Writ Petition is dismissed without any order as to costs.

[MADHAV J. JAMDAR, J.]