
(2014) 08 BOM CK 0227

In the Bombay High Court

Case No : Criminal Revision Application No. 34 of 2013

Jaideep Curtorcar and Others

APPELLANT

Vs

Gauri Curtorcar and Others

RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

Protection of Women From Domestic Violence Act, 2005 — Section 12 19 23

Citation : (2015) ALLMR(Cri) 2813

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

Advocate : J.J. Mulgaonkar, Advocate for the Appellant; Maria Caroline Collasso, and Deep Shirodkar, Amicus Curiae, Advocate for the Respondent;

Final Decision : Dismissed

Judgement

U.V. Bakre, J.

1. Heard Mr. Mulgaonkar, learned Counsel appearing on behalf of the petitioners, Ms. Collasso, learned Counsel appearing on behalf of respondent No. 1, under Legal Aid Scheme and Mr. Shirodkar, learned Amicus Curiae. Rule. Rule made returnable forthwith. By consent, heard forthwith.

2. This revision application has been filed against the judgment and order dated 03/10/2013 passed by the learned Additional Sessions Judge, FTC-I, South Goa, Margao (Additional Sessions Judge, for short) in Criminal Appeal No. 29 of 2013.

3. The respondent No. 1, herein, has filed an application under Section 12 of The Protection of Women from Domestic Violence Act, 2005 (the Act, for short), against the respondents which has been registered as Criminal Case No. 6/ DVA/2011/C and is pending before the learned Judicial Magistrate First Class (J.M.F.C, for short), at Vasco. The applicant No. 1 is the husband of respondent No. 1 whereas the applicant No. 2 is his brother and the applicants No. 3 and 4 are their parents. The respondent No. 1 shall hereinafter be referred to as the complainant and the applicants shall be referred to as the respondents.

4. In the said case, the complainant filed an application for an interim order under Section 23 of the Act. The complainant stated that the respondent No. 1 is likely to go abroad and if he is allowed to go abroad, the relief sought by her, in the main case, under Section 19 of the Act will become infructuous as she does not have the address of the respondent No. 1 abroad. It was also alleged that the respondent No. 1 has been playing all the tricks to deny to the complainant the relief claimed by her. She, therefore, claimed for interim relief of residence during the pendency of the main matter and prayed that she be allowed to go and stay at her matrimonial house at Cuncolim with all her belongings at that house.

5. The respondents filed their reply to the said application alleging that the complainant did not show any act of domestic violence by the respondents for grant of residence order and also did not show that she has no residence except that of the respondent No. 1. It was also stated that the complainant did not produce any document to support that the respondent No. 1 is likely to go abroad. The respondents alleged that great prejudice will be caused to the respondent No. 1 if the complainant is allowed to reside in the matrimonial house.

6. Upon hearing the learned Counsel for the parties, the learned J.M.F.C. granted the application. Consequently, the complainant has been allowed to reside in the matrimonial house and the respondents have been directed not to interfere with the complainant in the said house. The respondent No. 1 has been allowed to leave the country on the condition that he furnishes personal bond of Rs. 50,000/- (" Fifty Thousand only) and a surety in the like amount to secure his presence as and when directed and further gives an undertaking that he will be represented by the counsel in his absence and furnishes to the Court his passport details, residential address and the employment address in the country in which he desires to settle.

7. The respondents filed Criminal Appeal No. 29 of 2013. The learned Additional Sessions Judge held that the order of the learned J.M.F.C. is neither perverse nor illegal and does not warrant any interference in the appeal. The appeal came to be dismissed. The respondents are therefore before this Court.

8. An attempt was made for amicable settlement and learned Advocate Mr. Ryan Menezes was appointed as Mediator. Mr. Menezes, sincerely made various attempts towards the amicable settlement between the parties but unfortunately the parties could not reach to any settlement terms.

9. Mr. Mulgaonkar, learned Counsel appearing on behalf of the respondents submitted that the complainant was residing with her mother at Vasco and is also working there which is convenient for her and her stay in the matrimonial house at Cuncolim causes lot of trouble to both the parties since there exists hostility between them. He submitted that the respondent No. 1 had offered to arrange alternate residence for the complainant but for some reason or the other she has not accepted the same. He submitted that the impugned order is causing great

prejudice to the respondents and hence the same be quashed and the complainant be directed to stay at the residence which is arranged by the respondents.

10. On the other hand, Ms. Collasso, learned Counsel appearing on behalf of the respondent No. 1 submitted that under Section 19 read with section 23 of the Act, the Complainant is entitled to the interim relief of residence, in the shared household. She submitted that the respondent No. 1 has filed divorce petition against the complainant on the ground of ill-treatment and mental torture. She submitted that in such circumstances, it becomes necessary that the complainant is secured with the interim relief as prayed for and as granted by the lower Courts. Learned Counsel submitted that the alternate residence which was arranged for by the respondents was not suitable and the complainant cannot be forced to stay anywhere as the respondents like. She submitted that the order passed by the learned J.M.F.C. has been confirmed by the Additional Sessions Judge and, therefore, no interference with the same is called for in the present revision application.

11. Perused the material on record and considered the submissions made by the learned counsel for the parties.

12. There is no dispute that the house wherein presently the complainant resides is the shared household of the complainant and respondent No. 1. The respondent No. 1 has filed divorce petition against the complainant. There is possibility that the respondents, in such circumstances, would not treat the complainant as their wife/sister-in-law/daughter-in-law. According to the complainant, she had to leave matrimonial house as she was harassed by the respondents and that she wanted to come back to the matrimonial house and she had a right to do so. I do not see any reason as to why the impugned order passed by the learned Additional Sessions Judge thereby confirming the order passed by the learned Magistrate should be interfered with. The orders of the lower Courts are in accordance with the provisions of the Act and even otherwise they are interim orders pending the final disposal of Criminal Case No. 6/DVA/2011/C. No grounds are made out for interference with the impugned order.

13. In the result, I pass the following order:

"(a) The revision application is dismissed.

(b) The impugned order passed by the learned Additional Sessions Judge in Criminal Appeal No. 29 of 2013 and order dated 16/02/2013 passed by the J.M.F.C. are maintained.

(c) However, it is made clear that the learned J.M.F.C. shall not be influenced by any observations made in the said interim order dated 16/02/2013 passed by it in Criminal Case No. 6/DVA/2011/C or made by the learned Additional Sessions Judge in Criminal Appeal No. 29 of 2013 or by this Court in the present revision application.

(d) The learned J.M.F.C. shall dispose of the said Criminal Case No. 6/DVA/2011/C as expeditiously as possible and in any case within three months from the date of receipt of this order,

(e) The mediation fees are fixed at Rs. 10,000/- (Rs. Ten Thousand Only) and the same shall be paid to the learned Advocate Mr. Ryan Menezes by the respondents within four weeks from today."

Rule is made absolute in the aforesaid terms. The revision application stands disposed of accordingly, with no order as to costs.