

MCRC-1310-2016

(RAKESH SAHU Vs SMT. MAMTA SAHU)

01-05-2017

Shri Pal Singh Yadav, learned counsel for the applicant.

None for the respondent $\hat{\phi}$ though properly represented.

Final arguments are heard.

1. The applicant has filed the petition under Section 482 of the Cr.P.C. for quashment of the orders dated 27.04.2015 and 27.11.2015 passed by the Judicial Magistrate First Class Bhopal in R.T. No. 12543/15 titled Smt. Mamta Sahu Vs. Rakesh Sahu.

2. The brief background facts of the case for adjudication of the petition are as follows:-

1. On 12.01.2009, respondent Smt. Mamta Sahu filed an application before the court of Judicial Magistrate First Class Bhopal under Section 12 of the Protection of Women from Domestic Violence Act 2005 (for short "the Act") against applicant Rakesh Sahu and others seeking various reliefs from them. Thereupon, Misc. Criminal Case No. 519/08, Smt. Mamta Sahu Vs. Rakesh Sahu and others was registered. In that case, on 04.09.2014, the learned JMFC passed the final order, directing the applicant to pay the respondent a total of Rs. 7,000/- per month towards her personal maintenance and taking a house on rent from the date of filing the application with a direction that the interim maintenance allowance

shall be adjusted. Feeling aggrieved by the order, the applicant filed Criminal Appeal No. 943/14, Rakesh Sahu Vs. Smt. Mamta Sahu under Section 29 of the Act. Vide the judgment dated 22.07.2015, the learned Appellate Judge reduced the maintenance from Rs.7,000/- to Rs.5000/- per month.

2. Thereafter, on 23.03.2015 the respondent filed an application under Section 31 of the Act along with her affidavit for the recovery of arrears of the maintenance amounting to Rs.49,000/- due as on 23.03.2015 from the applicant. On 27.04.2015, the learned JMFC has ordered to register the application under the aforesaid Section. Thereupon, the application is registered first as MJC No. 627/15, later as R.T. No.12543/15. On 27.11.2015, the learned JMFC passed an order, directing to secure the presence of applicant in the case by issuing aailable warrant of arrest in the sum of Rs.5000/- and fixed the case for his presence. Hence, the petition.

3. Having taken this court through the order dated 04.09.2014 passed in M.Cr.C. No. 519/08 and the judgment dated 22.07.2015 passed in Criminal Appeal No. 943/14, the learned counsel for the applicant submits that both the courts have not passed the Protection Order in terms of Section 18 of the Act against the applicant. Therefore, the application filed by the respondent under Section 31 of the Act is not maintainable and the learned JMFC

has committed legal errors by registering the application vide order dated 27.04.2015 and directing vide order dated 27.11.2015 to secure the presence of the applicant in the case by means of bailable warrant of arrest. Thus, both the orders passed in R.T. No. 12543/15 are liable to be set aside by this court in exercise of powers under Section 482 Cr.P.C. He also submits that the applicant has already paid the maintenance to the respondent up to May, 2017. In support of this contention, he has drawn the attention of this court towards the statement of accounts prepared by him.

4. I have earnestly considered the submissions made by the learned counsel for the applicant and perused the entire material on record.

5. From the order dated 04.09.2014 passed in M.Cr.C. No.519/08 and the judgment and order dated 22.07.2015 passed in Criminal Appeal No.943/14, it is crystal clear that neither the learned JMFC nor the learned Appellate Judge has passed the Protection Order in terms of Section 18 of the Act against the applicant. On a plain reading of Section 18 of the Act in the light of definition of "Protection Order" given in Section 2(o) of the Act, it could be definitely said that the order of granting maintenance is not Protection Order and non-payment of the same will not attract the provisions of Section 31 of the Act. Thus, the learned JMFC has committed legal errors in passing the order dated

27.04.2015 for the registration of the application under Section 31 of the Act and the order dated 27.11.2015 for securing the presence of the applicant through the execution of bailable warrant of arrest in R.T. No.12543/15. In conclusion, both the impugned orders are quashed.

6. It is pertinent to mention herein that the sub-rule 5 of rule 6 of the Protection of Women from Domestic Violence Rules 2006 (for short the 'Rules 2006') provides that the orders of Magistrate shall be enforced in the same manner as laid down in Section 125 Cr.P.C. Thus, if any person so ordered to pay the maintenance fails to comply with the order the Magisterial Court of the competent jurisdiction is bound to issue warrant for levying the amount due in the manner for levying fines as per Section 421 Cr.P.C and may send the defaulter respondent to civil prison as per the procedure contemplated under Section 125 Cr.P.C. Section 28 (1) of the Act provides that the provisions of Section 12, 18 to 23 and 31 of the Act shall be governed by the general provisions of the Cr.P.C. In this view of the matter, the learned JMFC ought to have registered the application filed by the respondent herein, under sub-rule 5 of rule 6 of the Rules 2006, notwithstanding that the respondent has filed an application under Section 31 of the Act in view of the law laid down by the Supreme Court in the case of T. Nagappa Vs. Y.R. Muralidhar [2008 (4) MPLJ (SC)

455], wherein it is held that mere wrong mentioning of provision of law in an application would not be of any relevance, if the court concerned has the requisite jurisdiction to pass an order on it. Admittedly, the learned JMFC has jurisdiction to pass an order for recovery of the arrears of maintenance allowance against the applicant.

7. In view of the foregoing discussion, this petition is partly allowed and orders dated 27.04.2015 and 27.11.2015 passed in R.T. No.12543/15 are quashed with a direction to the learned JMFC to treat the application which the respondent filed under Section 31 of the Act, as if it was filed under sub-rule 5 of rule 6 of the rules 2006 and if necessary change the nomenclature of the case-file from R.T. to Miscellaneous Criminal case. The learned JMFC is also directed to give an opportunity to the applicant to prove his claim that he has already paid the maintenance to the respondent up to May, 2017. The applicant is directed to appear before the concerned JMFC court **on or before 27.06.2017**. If the learned JMFC takes him into custody for any reason whatsoever, then he be released upon his furnishing the personal bond in the sum of Rs.40,000/- .

8. A copy of this order be sent to the court of learned JMFC concerned.

9. In the aforesaid terms and conditions, this M.Cr.C. is finally disposed of.

Certified copy as per rules.

(RAJENDRA MAHAJAN)
JUDGE

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