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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1467 OF 2014

- 1) Mr. Gurmit Singh Bagga
Age – 41 Years, Occ: Business,
- 2) Mrs. Gurdeep Kaur Bagga,
Age – 38 Years, Occ: Business,
Both residing at – Prabhat Road,
Deccan, Pune.
- 3) Mr. Iqbal Singh Bagga,
Age – 46 Years, Occ: Service,
Working at – Quick Laundry,
Prabhat Road, Deccan, Pune.

... PETITIONERS

VERSUS

- 1) Mrs. Indrajit Kaur Bagga,
Age : 42 Years, Occ – Housewife,
R/at – Flat No. C – 16, Navle Residency,
Behind Shivshankar Super Market,
Pimple Saudagar, Pune – 411 027.

- 2) State of Maharashtra.

... RESPONDENTS

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Ms Aneeta Katariya, Advocate for the petitioners
Mrs A. A. Mane, AGP for State
Mr. Jasmeetsingh on behalf of respondent No. 1

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CORAM : **V. L. ACHLIYA, J.**

RESERVED ON : 18/4/2015.

PRONOUNCED ON : 04/08/2015.

JUDGMENT:

. Rule. Rule made returnable forthwith. By consent, taken up for final disposal at the stage of admission.

2. By this petition, the petitioners have challenged order dt. 5/3/2012 passed in R.C.S. No. 211/2008 by 32nd Jt. Civil Judge, J.D., Pune and order dt. 30/1/2014 passed against the said order by Additional Sessions Judge, Pune in Criminal Appeal no. 109 of 2011.

3. Petitioners have challenged the order on the various grounds as set out in detail in the petition. Since the challenge raised in the petition confines to order dt. 5/3/2012 passed in R.C.S. No. 211/2008, whereby the learned Civil Judge has allowed the application to join the petitioners No. 2 and 3 as party No. 2 and 3 along with petitioner no. 1 / plaintiff in the counter claim made by respondent No. 1, it is not necessary to discuss the facts of the case in detail.

4. It appears from the record that petitioner No.1 i.e. Mr Gurmit Singh Bagga had filed suit for injunction as against respondent No. 1, which was registered as Civil Suit No. 211/2008. In the suit filed by petitioner No. 1, the petitioner has alleged that respondent No. 1 i.e. Mrs. Indrajit Kaur Bagga, who is the wife of Mr Iqbal Singh Bagga (petitioner No. 3 herein) the marriage between them was solemnized long back and since the year 1992, respondent No. 1 was not residing with petitioner No. 3. She has filed various proceedings against petitioner No. 3 and other family members including the criminal case u/s 498-A of the Indian Penal Code. Without any cause or any reason respondent No. 1 was to make false complaints with the police. On the basis of these false complaints, the police personnel visited the house of petitioner No. 1. In view of the alleged act of respondent No. 1, the petitioner filed petition seeking prohibitory injunction against the respondent No. 1 not to cause any injury, damage to his german sheferd dog Bruno and also not to lodge false complaint with the police. In the year 2010, petitioner No. 1 (the plaintiff in said suit) withdrawn that suit by filing pursis to that effect. By

order dt. 3/2/2010 the then Jt. Civil Judge, Sr. Divn., Pune, was pleased to dispose of the suit as withdrawn with no order as to costs. However, the learned Judge passed an order that the application Exh. 55 & 56 filed by the defendant i.e. respondent No. 1 under the Protection of Women from Domestic Violence Act, 2005 be heard on merits. It appears that though the original plaintiff has withdrawn the suit, the suit remained to be continued and prosecuted at the instance of the defendant i.e. respondent No. 1, treating that application as counter claim. Subsequently, respondent No. 1 filed an application as contemplated under Order I Rule 10(2) of Civil Procedure Code, to join the present petitioners No. 2 and 3 as party defendants to the suit. Learned Civil Judge, Jr. Divn, Pune was pleased to allow the said application. However, the application was not amended though the application was allowed. Subsequently, respondent No. 1 filed an application vide Exh. 111 for amendment of the said counter claim filed by respondent No. 1 claiming certain reliefs as against petitioner No. 2 i.e. including added defendants. The application was opposed. By the impugned order dt. 5/3/2012 passed by 32nd Jt. Civil Judge, J.D., Pune, allowed the application Exh. 111 and allowed the respondent No. 1 to cure the defect by carrying out the amendment and file fresh amended plaint by adding new plaintiffs No. 2 and 3. Being aggrieved by the said order, the appellants preferred Appeal u/s 29 of the Protection of Women from Domestic Violence Act before the Sessions Court, Pune. Vide judgment and order dt. 30/1/2014, the learned Addl. Sessions Judge, pleased to dismiss the appeal. Being aggrieved by the said order, the petitioners have filed the present petition.

5. I have heard the submissions advanced by the learned Counsel representing the petitioners and Mr Jasmeet Singh, son of petitioner No. 1 appearing along with respondent No. 1 and learned APP for the State.

6. By referring the chequered history of the matter, learned Counsel for the petitioner has assailed the order on various grounds. It is contended that, looking to the fact that the suit filed by petitioner No. 1 was suit simplicitor for injunction and respondent No. 1 has independently filed proceedings under the Protection of Women from Domestic Violence Act, 2005 before the Family Court, the then Civil Judge, Jr Divn., should not have treated the application moved by respondent No. 1 as a counter claim to the suit, once the suit was allowed to be withdrawn and dismissed for want of prosecution. It is contended that petitioners No. 2 and 3 were not party to the suit, which was originally filed by the plaintiffs. Therefore, the learned Civil Judge, Jr. Divn., has committed gross error in entertaining the application to join them as party to the suit. It is further submitted that there is no pleading as such to attract the provisions of the Protection of Women from Domestic Violence Act in the alleged counter claim filed by the petitioners. The order is also challenged on the ground that once the amendment is not carried out, the learned Judge should not have allowed to cure the defect by subsequently allowing respondent No. 1 to further carry out the amendment. The order passed by the Addl. Sessions Judge is also assailed on the ground that the view taken in the matter that the appeal is not maintainable against the impugned order is erroneous.

7. Respondent No. 1 has opposed the writ petition filed by the petitioners on various grounds. Respondent No. 1 has objected the very maintainability of the writ petition with contention that the order impugned was already challenged by the petitioners before this Court by filing Writ Petition No. 4853 of 2012, which was disposed of on merits by order dated 15/4/2014 passed by Id. Single Judge of this Court. It is contended that filing of such appeal as well as writ petition is nothing but gross abuse of process of law. Respondent No. 1 has prayed for dismissal of the petition on this count alone.

8. Since respondent No. 1 has objected the maintainability of the petition on the ground that the order impugned was already challenged and writ petition already dismissed by this Court, it is necessary to consider the issue in respect of the maintainability of the instant petition before considering the merit of the petition. Respondent No. 1 has filed on record the copy of the writ petition No. 4853 of 2012 as well as the copy of the order dt 15/4/2014 passed in Writ Petition No. 4853/2012 by Single Bench (Coram : R. M. Savant, J.) of this Court. Perusal of the copy of the writ petition No. 4853 of 2012 clearly spells out that the present petitioners had filed Writ Petition No. 4853 of 2012 as against order dt. 5/3/2012 passed by 32nd Jt. Civil Judge, J.D., Pune in R.C.S. No. 211/2008 i.e. order passed below Exh. 111. The reliefs claimed in the petition read as under : -

- “a. That Rule be issued.*
- b. That, the Suit No. RCS No. 211/2008 may please be stay till finalization of the Writ Petition.*
- c. The Order dated 05/03/2011 passed by Hon'ble 32nd Jt. Civil Judge, Jr. Divn., Pune in the RCS No. 211/2008 be quashed and set aside.*
- d. May the Hon'ble Court kindly the allow the Application/Say at Exh. 99 filed by the Petitioner.*
- e. Ad-interim prayer in terms of clause (b) be granted till the disposal of the writ petition.”*

9. Thus, the perusal of copy of the writ petition and order dt. 15/4/2014 passed in the matter clearly shows that the order dt. 5/3/2012, which is challenged before this Court in the present petition was already challenged before this Court in Writ Petition No. 4853/2012 and same was dismissed. The prayer made in the present petition and the prayer made in the earlier writ petition are identical. In view of this, the instant petition deserves to be dismissed on the sole ground that the order impugned was already challenged before this Court and this Court has dismissed the petition on merits. While filing the present petition, the petitioners have not disclosed the

fact regarding filing of writ petition No. 4853/2012. In view of this alone, the petition deserves to be dismissed. Accordingly, the petition is dismissed with no order as to costs. Rule is discharged.

[V. L. ACHLIYA, J.]