

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1468 OF 2014

Smt. Anusua Mukul Mukherjee & Anr. .. Petitioners
-Versus-
State of Maharashtra & Anr. .. Respondents

Mrs.Pravina J. Kanani for petitioners
Mr.Milind A. Kale for respondent No.2
Mrs.A.A.Mane, APP for respondent No.1.

CORAM : M.L.TAHALIYANI, J.

DATE : 20th April 2015.

P.C.

1] Heard. Admit. Heard finally by consent.

2] This petition is filed by the petitioners against the order passed by the Additional Sessions Judge, Thane in Criminal Appeal No.414 of 2013. The said criminal appeal had arisen out of the order passed by the learned Chief Judicial Magistrate below Exh.16 in O.M.Application No.80 of 2013. The petitioner No.2 is a minor daughter of the petitioner No.1 and the respondent No.2. The petitioners have filed an application under section 12 of the

Protection of Women from Domestic Violence Act (hereinafter referred to as "the Act"). in the court of Chief Judicial Magistrate, Thane. The respondent No.2 appeared in obedience of the notice issued by the learned Magistrate and contended that the learned Chief Judicial Magistrate, Thane had no jurisdiction to entertain and decide the application filed by the petitioners under section 12 of the Domestic Violence Act. The learned Magistrate took the view that since the petitioners were temporarily staying at Thane, the Court of Chief Judicial Magistrate, Thane had jurisdiction to entertain and try the application.

3] The matter was carried to the Sessions Court by respondent No.2. The Sessions Court set aside the order of the Magistrate and directed that the application be returned to the applicant for being presented before the appropriate court at Pune. It appears from the judgement and order of the learned Additional Sessions Judge that he had occasion to see the record in which address of parents of applicant No.1 was mentioned as Type-C, 804, Sangria, Mega Polis, Hinjewadi, Phase-3, Pune 411027. During the course of arguments, it transpired that the applicant No.1 was staying at her parent's

house at Pune for some time. Her mother is no more and father has gone to Dubai for work.

4] The applicant No.1 with her daughter is staying with her Aunt at Thane. In the circumstances, in view of the provisions of section 27(1)(a) of the Act, the Chief Judicial Magistrate had jurisdiction to entertain and decide the application. In this regard, it may be noted that if the applicant No.1 is permanently residing at Pune and if she files a complaint at Thane, she will also face difficulty in attending the court. I do not see any reason to reject the observations made by the learned Chief Judicial Magistrate. In my view, the learned Magistrate has taken a correct view of the matter. The order of learned Additional Sessions Judge needs to be set aside. Hence, I pass the following order:-

(a) The petition is allowed.

(b) The order of learned Additional Sessions Judge impugned herein is set aside;

(c) The Chief Judicial Magistrate, Thane to hear the application filed by the petitioner under Protection of Women from Domestic Violence Act.

(d) The petition is disposed of accordingly.

(M.L.TAHALIYANI, J.)