

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

**CRIMINAL REVISION APPLICATION NO. 52 OF 2014
WITH
CRIMINAL APPLICATION NO. 2050 OF 2015**

Hemlata Ramprasad Dabhade

...APPLICANT

VERSUS

Ramdas Tukaram Dabhade

...RESPONDENT

Mr. S.B. Bhapkar, Advocate for the applicant.

Mr. M.P. Kale, Advocate for sole respondent.

CORAM : INDIRA K. JAIN, J.
DATED : 5th February, 2016

P.C. :-

. This revision application takes an exception to the orders passed by the learned Judicial Magistrate, First Class, Parbhani on 14.12.2011 in Criminal Misc. Application No. 445 of 2010 and by the learned Sessions Judge, Parbhani in Criminal Appeal No.2 of 2012 on 18.01.2014, thereby dismissing the proceedings under the Domestic Violence Act, filed by the applicant.

2. The facts giving rise to the revision application may be stated in brief as under :-

. On 06.09.2010 applicant presented a complaint before the learned Judicial Magistrate, First Class, Parbhani against the respondent under section 12 of the Domestic Violence Act for the reliefs under sections 18 to 22 of the said Act. Applicant claimed herself to be the wife of respondent. Respondent denied the relationship as alleged by the applicant.

. To establish her case, applicant examined seven witnesses before the Trial Court. After considering the evidence and on hearing the parties, Trial Court came to the conclusion that domestic relationship was not existing between applicant and respondent and in consequence thereof dismissed the complaint.

3. Being aggrieved, appeal was preferred before the First Appellate Court. Appeal also met with the same fate. Hence, this revision application.

4. Heard Mr. S.B. Bhapkar, learned Counsel for applicant and Mr. M.P. Kale, learned Counsel for sole respondent. Perused record.

5. With the assistance of the learned Counsel for the parties, this Court has gone through the evidence of witnesses examined by applicant before the Trial Court and observations made by Appellate Court while deciding the appeal. It can be seen from the judgment and order in appeal that except evidence of Dr. Smt. Shevale to some extent, there is no whisper regarding the evidence of other six witnesses. It appears that Appellate Court had given more emphasis to the provisions of the Domestic Violence Act, definition of Domestic Relationship under the said Act and the law prevailing in respect of the subject matter of dispute between the parties.

6. Needless to mention that Appellate Court was the final fact finding Court and it was expected from the learned Sessions Judge to evaluate the evidence adduced by the parties in proper perspective and find out whether Trial Court was right in recording the reasons and dismissing the complaint. Since the learned Judge had not taken into consideration evidence of the witnesses, this Court finds that restricted prayer of the applicant to remand the matter to First Appellate Court will have to be accepted. Accordingly, the following order :-

- i] Criminal Revision Application No. 52 of 2014 is allowed.
- ii] Impugned judgment and order passed in Criminal Appeal No.2 of 2012 by the learned Sessions Judge, Parbhani on 18.01.2014 is hereby quashed and set aside.
- iii] The learned Sessions Judge to decide the appeal afresh in accordance with the law within three months without being influenced by its earlier order.
- iv] Parties to appear in person or through their Counsel before the learned Sessions Judge, Parbhani on 22.02.2016.
- v] Criminal Application No. 2050 of 2015 stands disposed of.

[INDIRA K. JAIN, J.]

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