

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

CRIMINAL REVISION APPLICATION NO.146 OF 2016

Anand s/o Ramchandra Sandansing ...Petitioner

VERSUS

Ujwala w/o Anand Sandandsing
and others ...Respondents

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Shri C.R.Deshpande, advocate for petitioner
Shri D.M.Pingale, advocate for respondent no.1

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CORAM : N.W.SAMBRE, J.

DATED : 18th October, 2016

PER COURT :-

Respondent nos. 1 and 2, wife and minor child, have initiated proceedings under the provisions of Protection of Women from Domestic Violence Act, 2005 (for short, 'the D.V.Act'), which came to be partly allowed by the learned Judicial Magistrate, First Class, Shahada on 28.7.2015, granting maintenance to the extent of child, however, the claim of the wife came to be disallowed.

2. Against the above referred order, the present petitioner/husband preferred Criminal Appeal No.16 of 2015, whereas respondent/wife preferred Criminal Revision No. 39 of 2015. The petitioner/husband objected to the maintainability of the Revision. However, the learned Additional Sessions Judge, Shahada dismissed Criminal Appeal No. 16 of 2015 preferred by the present petitioner and allowed Criminal Revision No. 39 of 2015 preferred by the wife, thereby directing the present petitioner to pay an amount of Rs.3,000/- per month towards maintenance to the wife, in addition to the amount of maintenance awarded in favour of the son. As such, the present application.

3. Learned counsel for the petitioner Shri C.R.Deshpande would urge that specific objection to the tenability of the Revision was raised. So as to substantiate his contention, he has invited my attention to the pleadings considered in para 12 of the impugned judgment and also the issues

which fell for consideration before the learned Sessions Judge. He further invited my attention to the provisions of Sections 397 and 401 of the Code of Criminal Procedure and Section 29 of the D.V. Act, which deal with the maintainability of Revision under the Code of Criminal Procedure and the appeal under the D.V. Act.

4. Per contra, while supporting the judgment impugned, passed in Revision, the learned counsel for the respondent/wife would submit that the Court is required to infer from the findings and considerations recorded in the judgment as to whether the Court below has exercised the powers of the appellate Court or the Revisional Court. He would then urge that specific issues were framed, the evidence was reappreciated and the findings of award of maintenance to the respondent/wife, in addition to that of child, came to be recorded, which can be done only in exercise of the appellate jurisdiction.

5. In the alternative, he prays that he be permitted to convert the Revision which was filed before the Sessions Judge to that of an appeal.

6. Having considered the rival considerations, it is required to be noted that so far as findings, as are recorded in Criminal Appeal No. 16 of 2015 preferred by the petitioner are concerned, there is hardly any case for interference, and as such, the findings recorded in Criminal Appeal No.16 of 2015 qua dismissing the appeal are confirmed.

7. This takes me to the next submission, whether Revision is maintainable against the order of the Magistrate refusing to award maintenance.

Section 29 of the D.V. Act reads thus :-

" 29- Appeal. There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later."

What could be inferred from the plain reading of Section 29 is that the said statute in

express terms provides for remedy of appeal against the order passed by the Magistrate in respect of the aggrieved person or the respondents, as the case may be.

8. It is settled position that the appeal is a statutory remedy and when the statute provides for such remedy, remedy of Revision, as is taken recourse to, cannot be termed to be one available by way of common law precedent. The scope of jurisdiction while exercising powers under Section 29 of the D.V. Act i.e. appellate powers and the one under Section 397 and 401 of the Code of Criminal Procedure i.e. revisional powers is altogether different. While dealing with the appeal, the appellate Court has every right to reappreciate the evidence in the background of pleadings and record the findings. Such does not appear to be a case while dealing with the Revision, as consideration for exercise of revisional jurisdiction appears to be restricted one, as the Court is required to consider whether

there is valid ground to exercise the jurisdiction or the Court has exceeded in exercising the jurisdiction.

9. It is to be noted from the very factual matrix, as is narrated, that the learned Sessions Judge perhaps lost sight of the fact that the D.V. Act is a special statute providing for statutory remedy of appeal against the order passed by the Magistrate while dealing with application under Section 12 of the D.V. Act. Learned Sessions Judge, though is clothed with powers to entertain both the appeal under the D.V. Act and the Revision under Sections 397 and 401 of the Code of Criminal Revision, however, unless the statutory remedy, as is available under Section 29 of the D.V. Act is exhausted, the party, in my opinion, cannot take recourse to the revisional jurisdiction or rather the learned Sessions Judge is not empowered to exercise the Revisional jurisdiction in view of express provisions under Section 29 of the D.V. Act.

10. In the above referred background, though prayer is made for conversion of Revision into Appeal, however, in my opinion, such permission cannot be granted, as neither a statute to that effect provides in express terms, nor the considerations/grounds in Revision could be termed on par with the grounds which are to be considered in appeal.

11. Consequently, the order passed by the learned Sessions Judge, Shahada in Criminal Revision No. 39 of 2015 on 3.5.2016 awarding maintenance of Rs.3,000/- to the respondent/wife to be paid by the present petitioner is hereby quashed and set aside.

12. Needless to observe, the respondent/wife will be at liberty to approach the learned Appellate Court i.e. Sessions Judge, as is provided under Section 29 of the D.V. Act, if so advised, to question the order passed by the learned Magistrate denying the maintenance to her.

13. The time consumed in prosecuting present proceedings before this Court be considered by the learned Appellate Court while dealing with appeal by the respondent/wife.

14. The entire amount deposited before this Court be transferred to the Court of Judicial Magistrate, First Cass, Shahada, before whom the execution proceedings i.e Miscellaneous Criminal Application No. 52 of 2016, pursuant to the order passed by the learned Magistrate, are pending. The executing Court will be at liberty to appropriate the said amount as per the prayer of the parties pursuant to the order passed by the learned Magistrate.

(N.W.SAMBRE, J.)

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