

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

**CRIMINAL REVISION APPLICATION NO.380 OF 2014**

|                                 |      |             |
|---------------------------------|------|-------------|
| Supriya Bapu Teli               | .... | Applicant   |
| V/s.                            |      |             |
| The State of Maharashtra & Ors. | .... | Respondents |

Mr. Rahul S. Kadam for the Applicant.

Mrs. Anamika Malhotra, A.P.P., for  
Respondent No.1-State.

Mr. A.S. Khandeparkar, a/w. Mr. Rajdeep  
Gude, i/by M/s. Khandeparkar & Associates,  
for Respondent Nos.2 to 4.

**CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 14<sup>TH</sup> JANUARY 2016.**

**P.C. :**

1. This Revision Application takes an exception to the Judgment and Order dated 26<sup>th</sup> September 2014 of Principal District Judge, Sindhudurg-Oras, in Criminal Appeal No.38 of 2014. By the impugned order, the Appeal was partly allowed and the order passed by the Judicial Magistrate, First Class, Kudal in Criminal Miscellaneous Application No.38 of 2012, thereby awarding compensation of Rs.50,000/- to the Petitioner was set aside.

2. Petitioner is the wife of deceased Bapu. Respondent No.2 is the brother of late Bapu and Respondent Nos.3 and 4 are the sons of Respondent No.2. Petitioner herein has filed an application under the various provisions of the Domestic Violence Act against Respondent Nos.2 to 4, seeking the relief of protection order and also the compensation amount from them on the ground that, though they were knowing that deceased Bapu was suffering from HIV positive, they did not either restrained Bapu from performing marriage with her or disclosed the said fact to her. As a consequence of marriage with Bapu, she also started suffering from HIV positive and hence holding Respondent Nos.2 to 4 liable and responsible, to pay the damages to her, she claimed the amount of Rs.50,000/- as compensation, which was awarded by the Trial Court.

3. When this order was taken up before the Appellate Court, the Appellate Court, as stated above, has set aside the said order.

4. As regards other parts of the order like the protection granted to her from eviction in the ancestral house, which was given to her by the Trial Court, is not challenged in the Appellate Court or here also.

5. Undisputed facts on record are to the effect that deceased Bapu was a HIV positive patient and after marriage of Petitioner with him, Petitioner also got HIV positive status, which is proved through the evidence of Dr. Chetan Mhadgut. The real question for consideration is, *'whether Respondent Nos.2 to 4 were aware of the HIV positive status of Bapu and despite being aware, they either did not disclose the said fact to the Petitioner or did not restrain Bapu from marrying with her?'*. In this respect, the learned counsel for the Petitioner has relied upon the reply filed to the Domestic Violence Petition by the present Respondents, particularly to para No.22 therein, wherein it is stated that Bapu was suffering from some incurable decease and Respondent Nos.2 to 4 were aware of the same. However, they were not aware as to what was the said decease. In my considered opinion, these very averments in para No.22, instead of supporting the case of the Petitioner, negatives the same as, since beginning, Respondent Nos.2 to 4 are categorical to the effect that they were not aware as to from which decease Bapu was suffering.

6. Moreover, the cross-examination of the Petitioner reveals that, since beginning, Respondent Nos.2 to 4 were residents of Goa. They had never provided any medical treatment to Bapu. Even they had never looked

after him. She has further admitted that the relations between Bapu and Respondent Nos.2 to 4 were never cordial and they were also not on visiting terms. In such situation, merely because at the time of marriage of Petitioner with Bapu, Respondent Nos.2 to 4 were present, it cannot be inferred that they were having the knowledge about Bapu suffering from HIV positive and hence they were liable to disclose the said fact to the Petitioner.

7. Moreover, in the instant case, as admitted by the Petitioner in her cross-examination, if since beginning Respondent Nos.2 to 4 were residing separately and had never resided with Bapu or with the Petitioner, here the essential question is arising for consideration as to whether the Petitioner can be called as living in domestic relationship with Respondent Nos.2 to 4. The definition of 'Domestic Relationship', as given in Section 2, sub-clause (f), of Protection of Women from Domestic Violence Act, 2005, essentially contemplates, *'a relationship between two persons, who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as joint family'*. This essential requirement of Petitioner and Respondent Nos.2 to 4 living together or sharing the common household

as joint family, is conspicuously lacking in the present case, in view of the clear admissions given by the Petitioner herself in her cross-examination. Therefore, it necessarily follows that the very application preferred by the Petitioner claiming compensation from Respondent Nos.2 to 4 under the provisions of Domestic Violence Act was not maintainable on factual aspects also. In view of the evidence discussed above, it necessarily follows that Respondent Nos.2 to 4 were not aware about the ailment of deceased Bapu. They were only knowing that he was suffering from some incurable disease; that disease may be any other and not necessarily the AIDS or HIV positive.

8. In view thereof, the Appellate Court has rightly set aside the order of the Trial Court granting compensation of Rs.50,000/- to the Petitioner from Respondent Nos.2 to 4. The order of the Appellate Court, being well reasoned and borne out from the factual and legal aspects, no interference is warranted therein.

9. Revision Application stands dismissed.

**[DR. SHALINI PHANSALKAR-JOSHI, J.]**