

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

CRIMINAL WRIT PETITION NO. 271 OF 2016

Mrs. Rupali Ravindra Ghorpade ... Petitioner

V/s.

Mr. Ravindra Madhavrao Ghorpade & Ors. ... Respondents

Mr. Nitin Deshpande for the Petitioner.

**CORAM : K. K. TATED, J.
DATED : 03/10/2016**

PC.:

. Heard learned Counsel for the petitioner.

2 By this petition under Article 227 of the Constitution of India, the petitioner challenges the judgment dated 12.10.2015 passed by Additional Sessions Judge, Satara in Criminal Appeal No. 56 of 2011 partly setting aside the judgment and order dated 13.12.2010 passed by the 5th J.M.F.C., Satara in Misc. Criminal Application No. 394 of 2009 allowing Respondent Wife's application under Section 12 of Protection of Women from Domestic Violence Act, 2005 (hereinafter will be referred as "said Act"). The trial court by order dated 13.12.2010 under the said Act directed Respondent husband to pay sum of Rs.1,000/- per month as a rent and also sum of Rs.30,000/- towards the medical expenses. The trial court also directed Respondent to pay sum of Rs.3,000/- towards the maintenance charges to the petitioner and her daughter.

3 The Additional Sessions Judge by impugned judgment dated 12.10.2015 set aside the order passed by the trial court except towards payment of Rs.30,000/- for medical expenses.

4 The learned counsel for the petitioner submits that the impugned judgment dated 12.10.2015 passed by the Additional Sessions Judge, Satara in Criminal Appeal No. 56 of 2011 is contrary to the law and same is required to be set aside. He submits that the learned Magistrate rightly held that the petitioner being the wife is entitled to maintenance, rental charges as well as medical expenses from Respondent husband under Section 12 of Protection of Women from Domestic Violence Act, 2005. He submits that the Appellate Court at the time of setting aside the order passed by the learned JMFC dated 13.12.2010 erred in relying on order passed in Criminal Misc. Appeal No. 205 of 2005 and order passed by JMFC in Application under Section 125 of Cr.P.C. He submits that the petitioner filed the present application under the said Act which was independent. He submits that the Appellate Court failed to consider the fact that once the court has satisfied that domestic violence has taken place, then as per provision of Section 19 of the Said Act, order for providing residence is must. He submits that there is an error on the part of Appellate Court in not giving to the petitioner relief of maintenance and residence order though there was finding of domestic violence. He submits that under Section 20(d) of the said Act order of maintenance can be passed in addition to the order of maintenance under Section 125 of Cr.P.C. or any other law for the time being in force. On the basis of these submissions and the following grounds, the petitioner seeks to set aside

the impugned order dated 12.10.2015 in Criminal Appeal No. 56 of 2011. The grounds raised by the petitioner in petition are as under:

“10. The Petitioner is challenging the said aforesaid order on the following amongst other grounds, which may be taken without prejudice to each other.

A) The impugned judgment and order is erroneous not maintainable in law and is against the principles of justice.

B) The Appellate Court committed an error in denying to the Petitioner the relief of maintenance and residence, though it has given a finding that the petitioner was subjected to domestic violence.

C) The appellate Court ought to have seen that, once the court is satisfied that, the domestic violence He submits that taken place then as per the provisions of section 19, residence order must be passed. There is an error on the part of the appellate court in not giving to the petitioner relief of maintenance and residence order, though there is finding of domestic violence.

D) It is submitted that, under Section 20(d) of the Act, order o maintenance can be passed in addition to the order of maintenance passed under Section 125 of the Code of Criminal Procedure or any other law for the time being in force. The appellate Court therefore has committed an error in not granting any maintenance to the Petitioner.

E) The appellate Court ought to have given benefit to the Petitioner against the Respondent No.2.

F) The Petitioner submits that looking at the definition of the domestic relationship, the relief under the Act can be given to the divorcee even.”

5 On the basis of these submissions, the learned counsel for the petitioner submits that in the interest of justice, this Hon'ble Court be pleased to set aside the Judgment dated 12.10.2015 passed by the learned Additional Sessions Judge, Satara in Criminal Appeal No. 56 of 2011 and restore the order dated 13.12.2010 passed by the 5th JMFC,

Satara in Misc. Criminal Application No. 394 of 2009.

6 It is to be noted that in the present proceeding, the earlier petitioner filed maintenance application under Section 125 of Cr.P.C. In that application, the learned Magistrate passed order and granted Rs.1,500/- each as maintenance for petitioner wife and her daughter Vaishnavi in Criminal Misc. Application No. 206 of 2005 on 28.02.2007. Thereafter, the petitioner also preferred application under Hindu Marriage Act. In that proceeding i.e. HMP No. 169 of 2009, the Trial Court by judgment and order dated 22.12.2010 directed respondent to pay sum of Rs.6,000/- to the petitioner wife and Rs.2,000/- to her daughter. This shows that in all, the petitioner is getting Rs.7,500/- per month for herself and Rs.3,500/- for her daughter.

7 It is to be noted that petition filed by the petitioner for divorce being HMP No. 169 of 2009 was finally decided and decree of divorce passed in favour of petitioner by Civil Judge, Senior Division, Satara on 22.12.2010. The said order was challenged by the Respondent preferring Regular Civil Appeal No. 42 of 2011 before the District Court at Satara. That Appeal came to be partly allowed by the Appellate Court holding that the petitioner wife is entitled to Rs.5,000/- per month and Kumari Vaishanvi daughter of petitioner is entitled to Rs.2,000/- per month by way of maintenance charges. This itself shows that as of today the petitioner is getting near about Rs.7,500/- for herself and Rs.3,500/- for her daughter by way of maintenance. The petitioner has not brought on record any documentary evidence to show that she is entitled to additional compensation for her

maintenance as well as her daughter's. Hence, I do not find any substance in the present petition.

8 Writ Petition stands rejected.

(K.K.TATED, J.)