

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

WRIT PETITION NO.1168 OF 2015

Sou. Puja Prasad Patankar Petitioner

Vs.

The State of Maharashtra & Ors. Respondents

Mr. A.S. Patil, Advocate for the petitioner.

Ms. S.V. Gajare, APP for the State of Maharashtra.

Mr. Sudhir Hardikar, Advocate for Respondent no.2.

Mr. Akshay Kulkarni h/for Mr. A.M. Kulkarni, Advocate for Respondent no.3.

Coram : Smt. R.P. SondurBaldota, J.

Date : 11th February, 2016.

P.C.

1 The petitioner-wife files this petition under Article 227 of the Constitution of India and under Section 482 of Code of Criminal Procedure to challenge the order dtd. 6th February, 2015 passed by the Sessions Court, Kolhapur dismissing her Criminal Appeal No.38 of 2013 preferred against the order of the trial court dtd.4th June, 2012. Respondent no.2 is the mother-in-law of the petitioner and respondent no.3 is her husband. The petitioner has filed Summary Criminal Case No.57 of 2012 under Section 25 of the Protection of Women from

Domestic Violence Act, 2005 (“The Act” for short) against respondent no.3, the husband.

2 The marriage of the petitioner and respondent no.3 took place in the year 1997. They have a daughter born from the marriage wedlock. The marriage was an inter-religion marriage and was strongly opposed by the parents of respondent no.3. The petitioner has been working in the Health Department of Zilla Parishad since prior to the marriage and as such had been residing in Zilla Parishad Employees Quarters, Kadamwadi. The father of respondent no.3 was the exclusive owner of Flat No.1, Plot No.13, Vrundavan Housing Society, Tarabai Park, Kolhapur. After the marriage of the petitioner and respondent no.3, the father had dis-inherited respondent no.3 by executing will dtd. 25th September, 1998, bequeathing his entire properties to respondent no.2, his wife. The father died in the year 2008. After marriage, the petitioner and respondent no.3 resided at the government quarters. Even after the marital discord, when respondent no.3 left her, the petitioner continued to reside in the government quarters until 31st August, 2011. When she suddenly vacated the quarters and started residing at Flat No.6, Balwant Apartment, Tarabai Park, Kolhapur, the rented premises.

3 The petitioner had filed application at Exhibit 12 for direction to respondent no.3 to give her two rooms in the flat at Vrundavan Society. The reason stated in the application for seeking

the direction was that the daughter was taking education in 10th standard and hence she was in need of two room. One room in which they had been residing was insufficient. Considering the contention, the trial court allowed the application by it's order dtd.4th June, 2012. Respondent no.2 thereupon filed the application at Exhibit 26 for setting aside the order contending that she being the exclusive owner of the flat and the flat never being the shared household, the petitioner had no right of residence therein. The trial court by it's order dt. 11th December, 2013 held that the petitioner had always resided in the government quarter allotted to her and the flat at Vrundavan was never a shared household and vacated the order passed earlier. It however directed respondent no.3 to provide a rented house of minimum two rooms to the petitioner and the daughter in the nearby locality of her present address looking to the educational need of the daughter.

4 Being aggrieved by the order, the petitioner filed Criminal Appeal No.38 of 2013 in the District Court, Kolhapur. The appeal was dismissed by the order dtd.6th February, 2015 taking note of the fact that there is material to show that the petitioner was residing in government quarters till the year 2011 and as on the date of her application, she was actually residing at Balwant Apartments. Further respondent no.2 had snapped his ties with his parents as far back as 1998 and had been dis-inherited by his father. Respondent no.1 has become exclusive owner of the flat in question in view of the bequest

in her favour. The petitioner had never shared domestic relationship with respondent no.3 in that flat and as such she cannot enforce a right of residence therein.

5 In view of the established facts, I find no infirmity whatsoever with the orders impugned in the petition. It is obvious from the fact that the application for shared hold was nothing but an attempt on the part of the petitioner to grab the flat in question. Her application does not disclose any ostensible reason to surrender the government quarters and shift to tenanted premises consisting of one room. Hence the petition is dismissed.

6 Mr. Patil seeks extension of the ad-interim orders for some time. Considering the facts of the case, the request is rejected.

(Smt. R.P. SondurBaldota, J.)