

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3680 OF 2015

Jaysing Dhondiba Langhe & Anr. ... Petitioners
vs.
Manisha Ravikumar Langhe & Anr. ... Respondents

Mr. Varad Deore, Advocate for the petitioners.
Mr. R.S.Kadam for respondent No.1.
Mr. A.A.Gore for respondent No.2.
Mr. A.R.Patil, APP, for the State.

CORAM: SMT. SADHANA S.JADHAV, J.
DATE : 13th June, 2016.

P.C.

Heard. Rule. Rule made returnable forthwith with consent of the parties.

2. The petitioners herein happen to be the respondents in Criminal Misc. Application No.495 of 2011, which was filed by the respondents herein before the Judicial Magistrate, First Class, Court No.4, Pune, under the provisions of Sections 18, 19, etc. of the Protection of Women from Domestic Violence Act, 2005 (DV Act). There were several allegations levelled against the present petitioners by the complainant therein. The petitioners had appeared before the trial Court.

3. The learned Judicial Magistrate, First Class, Pune by an order dated 22.7.2014 was pleased to issue directions thereby restraining the petitioners and others from causing any domestic violence upon the respondent and had also directed the petitioner to make arrangement for residence of the respondent in the flat at Kalamboli. The petitioner herein happens to be the owner of the said flat. It is the contention of the petitioner that the said flat at Kalamboli is jointly owned by the present petitioner and his son. It cannot be said that the respondent-wife had no right to shelter in the said flat as it was jointly owned by the son of the petitioner who happens to be the husband of the respondent. The petitioners were also directed to give maintenance to the complainant-wife to the tune of Rs.20,000/-.

4. Being aggrieved by the order passed by the Judicial Magistrate, First Class, Pune, the petitioner has filed Civil Appeal before the Court at Pune, which was registered as Criminal Appeal No.373 of 2014. The learned appellate Court, by a judgment and order dated 25.8.2015 was pleased to dismiss the appeal.

5. The appellant No.1 in Criminal Appeal No.373 of 2014 – Ravikumar Langhe had filed Hindu Marriage Petition against the respondent which was registered as Hindu Marriage Petition No.11 of 2012 before the Court of Civil Judge, Senior Division, Panvel. The said Hindu Marriage Petition was contested tooth and nail and by a judgment and order dated 6.2.2016, the learned Joint Civil Judge, Senior Division, Panvel was pleased to allow Hindu Marriage Petition with costs and had thereby passed the decree to that effect and the marriage of Ravikumar Langhe and Manisha Langhe stands dissolved.

6. The learned counsel for the respondent submits that the respondent has filed an appeal challenging the judgment and order of divorce. The said appeal is registered as Civil Appeal No.62 of 2016 and is pending before the District Court at Alibag. The learned Sessions Court while dismissing Criminal Appeal No.373 of 2014, had upheld the order directing the son of the petitioner to permit the respondent to reside in the flat at Kalamboli.

7. By the present petition, the petitioners, who happen to be the in-laws of respondent No.1, are challenging the orders passed by the

appellate Court dated 25.8.2015, thereby upholding the order passed by the learned Judicial Magistrate, First Class, Panvel dated 22.7.2014 on the ground that subsequent to the passing of the judgment and order in an appeal, there has been a decree of divorce. The learned counsel for the petitioners seeks modification of the order on the ground that now the parties have been divorced, the respondent would not be entitled to reside in the said house. According to the learned counsel, there has been a change in circumstances as such she cannot claim a right to residence in the shared household. It is further stated that during the pendency of the appeal, the petitioner is willing to pay the rent of the house which the respondent No.1 may take on rent, lease/license.

8. The learned counsel for the respondent has submitted that in the changed circumstances, Writ Petition would not be maintainable and the petitioner would take recourse to Section 25 sub-clause (2) of the Protection of Women from Domestic Violence Act, 2005 since the impugned order has been passed under the special statute. It is a matter of record that the present petition has been filed in the changed circumstances. Section 25(2) reads as follows :-

“25(2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.”

Hence, this Court is of the opinion that the Writ Petition would not be maintainable.

9. The learned counsel for the petitioners fairly submits that in the said eventuality, he be granted liberty to approach the original Court i.e. the Court of the Magistrate to consider the case in the changed circumstances as it would not amount to review, but an application in the changed circumstances.

10. Hence, the petition deserves to be disposed of with the following directions :-

(i) The petitioner shall avail of the remedy under Section 25 sub-clause (2) of the Protection of Women from Domestic Violence Act, 2005.

(ii) The learned Magistrate shall decide the said application on its own merits without being influenced either by the orders passed earlier by the Magistrate Court or the appellate Court under the D.V. Act or the observations made by the District Court in Hindu Marriage Petition No.11 of 2012 which is disposed of by a judgment and order dated 6.2.2016.

(iii) All contentions would be kept open.

(iv) It is also made clear that time spent in prosecuting the present Petition shall be considered by the Magistrate at the time of deciding any application seeking condonation of delay or while considering the delay caused in filing the said application under Section 25 sub-clause (2) of the D.V. Act.

11. Rule is discharged. Writ Petition stands disposed of.
12. Parties to act on an authenticated copy of this order.

(SMT.SADHANA S.JADHAV, J.)