

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 4268 OF 2015

Dilip Vithal Borase and Ors

.....Petitioners

V/s.

Manisha Dyaneshwar Borase and Ors

....Respondents

Mr. Yogesh Dabre Advocate for Petitioner.

Mr. V. B. Konde-Deshmukh APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : JULY 19, 2016.

PC :

- 1) Heard.
- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Petitioners herein are the original Respondents in Misc. Application filed by the Respondent under the provisions of Protection of Women from Domestic Violence Act, 2005. It appears from the impugned order that on 10/11/2014, the learned Magistrate had issue notice to the Respondents and had called for a report from the Protection Officer.
- 4) Being aggrieved by the said order, the Petitioners filed Criminal Appeal No. 29 of 2015 before the Sessions Court at Kalyan. Appellants therein had urged that they are not concerned with the domestic violence and hence, no

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notice could be issued against them. The Petitioners had challenged the legality of the order of issuance of notice and calling for report of the Protection Officer. The learned Appellate Court has rightly held that an appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 would not be maintainable as the appeal was filed at a pre-mature stage. The order of issuance of notice cannot be said to be a final order nor it would indicate that the learned Magistrate had expressed any opinion or passed any effective order against the Petitioners. The appeal was filed against the procedural orders. The Appellate Court, vide order dated 05/10/2015 had rightly dismissed the appeal as 'not maintainable'.

5) In fact, this could not have caused any prejudice to the Petitioners, however, being aggrieved by the order dated 05/10/2015, present petition has been filed.

6) The findings recorded by the Appellate Court cannot be interfered with as justifiable reasons have been assigned for the same.

7) The learned counsel for the Petitioner further submits that present application under Protection of Women from Domestic Violence Act, 2005 is being enquired into and the substantive evidence of the complainant is being

recorded.

8) There is no reason to interfere at this stage. Hence, petition stands dismissed.

9) Rule is discharged.

(SMT. SADHANA S. JADHAV, J.)