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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4300 OF 2015.

Bhumesh Prakash Pawar & Ors ..Petitioners.

Vs

Vaishali Bhumesh Pawar & Ors ..Respondents.

Mr Abhijit Patil for the petitioners.

Smt. Anamika Malhotra, APP for the Respondent-State.

CORAM : A.S.GADKARI, J.

DATE : 16th March, 2016

P.C.

1) By the present petition filed under Article 227 of the Constitution, the petitioners have assailed the order dated 28.9.2015 passed by the learned Additional Sessions Judge, Raigad-Alibaug in Criminal Appeal No.176 of 2014.

2) The respondent no.1 has filed complaint-application in the Court of Judicial Magistrate, First Class, at Panvel as contemplated under section 12 of the Prevention of Domestic Violence Act (for brevity the said 'Act') for the reliefs under sections 18, 19, 20, 21 and 22 of the said Act against the petitioner no.1 herein who is the husband of the respondent no.1. In the said complaint, the respondent no.1 has given her address as c/o Suresh Vishram

Chavan, Sahyadri CHS, Sector 6, Khanda Colony (W), New Panvel, Taluka Panvel, District Raigad. The petitioners herein preferred an application below Exh.7 bearing No. OMA 98/2014 for framing a preliminary issue on the point of jurisdiction and prayed for dismissal of the complaint.

3) It is the contention of the petitioners that the respondent no.1 was residing on leave and licence basis at K-L-6, Building No.12, Room No.6, Sector No.3, Kalamboli, Navi Mumbai. The said room was taken on leave and licence basis by the respondent no.1 from Dattatraya Hari Pagar, the landlord. It is further contended by the petitioners that the address of father given by the respondent no.1 in her complaint before the Magistrate is false. The respondent no.1 is not residing with her father and is residing at the address mentioned in the leave and licence agreement dated 26.8.2014. The learned Trial Court after hearing the parties to the said application rejected it, by its order dated 14.10.2014 by holding that the said Court is having jurisdiction.

3) The petitioners preferred Criminal Appeal No. 176/2014 against the order dated 14.10.2014 passed by the JMFC, Panvel. That during the pendency of the said appeal, the Appellate Court

called for a report from the police to verify whether the respondent no.1 was really residing at the address mentioned in the leave and licence agreement. The Senior Police Inspector, Kalamboli Police Station submitted its report dated 20.3.2015 thereby stating that at the said address, Mr Dattatraya Hari Pagar is residing for more than 12 years and the respondent no.1 was not residing there. After taking into consideration the said report and the other relevant aspects, the Appellate Court i.e. the Additional Sessions Judge Raigad at Alibaug partly allowed the said appeal. The order passed by the learned JMFC below Exh.7 dated 14.10.2014 is quashed and set aside and the Appellate Court directed the learned Magistrate to decide the issue of jurisdiction afresh by giving opportunity to both the parties to lead oral and documentary evidence.

4) The learned counsel for the petitioners submitted that in the impugned judgment and order, the learned Additional Sessions Judge at paragraph 10 has observed that the police reports which are before the Appellate Court would not come in the way to decide whether the respondent no.1/original complainant was residing within the territorial jurisdiction of Judicial Magistrate, First Class, Panvel at the time of filing of the main application. The learned

counsel for the petitioners submitted that the said observation may be expunged from the record and proceedings as it may cause hardship to his client in the contentions to be raised before the Trial Court while deciding the application for preliminary issue on the point of jurisdiction.

5) I have perused the entire record annexed to the present petition and the impugned judgment and order dated 19.9.2015 passed by the Additional Sessions Judge, Raigad in Cr. Appeal No.176/2014. It is clear from the record that while filing the complaint, the respondent no.1 has given the address of her father namely Suresh Chavan, resident of Khanda Colony (West), New Panvel, Taluka Panvel, District Raigad. The address mentioned in the leave and licence agreement appears to be a temporary address acquired by the respondent no.1 at that relevant time. Apart from the said fact, the respondent no.1 was staying with her father after leaving the matrimonial house due to domestic violence at the address mentioned in the complaint at the time of filing of the said application/complaint under section 12 of the Domestic Violence Act.

6) May it, as it may, as the present petition is filed against an

interlocutory order, I do not feel it necessary to exercise the jurisdiction under Article 227 of the Constitution of India to interfere with the same, as I find that there is no error of law or on facts committed by the learned Appellate Court i.e. the Additional Sessions Judge. The petition being sans of any merit is dismissed accordingly.

(A.S.GADKARI, J.)