

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4075 OF 2012

Mr. Raju Sitaram Landge. ... Petitioner.
Versus
Smt. Asha Ramkisan Lave & ors. ... Respondents.

Mr. P.V. Dube, advocate for petitioner.

Mr. N.P. Deshpande, advocate for respondent No. 1.

Ms. A.A. Mane, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : JUNE 21, 2016

P.C.:

1 Heard the learned Counsel for the Petitioner and the learned Counsel for the respondent. Perused the papers.

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

3 The Petitioner herein happens to be the respondent No.1 in Misc. Application No. 1199 of 2011. Perused the complaint filed by the respondent under section 12 of the Protection of Women from Domestic Violence Act. It is contended in the complaint that the complainant resides in the trust property which was owned by her parents. She is residing in a room admeasuring 10 x 8 sq. ft. That was an arrangement made by her father. That she resides with her son in the said room. There are other rooms in the said property and the respondent No. 1 and 2 have inducted certain tenants in the adjoining rooms. In paragraph-1 of the complaint it is stated that the respondent No. 2 happens to be the real brother of the complainant whereas the respondent No. 1 in the said petition happens to be her step-brother and that they all three are residing in the suit property close to each other. In the complaint, there is no averment that they are members of the shared household or living under the same roof.

4 In view of the averments made in the complaint, the petitioner herein had filed an application for framing preliminary issue as to the

maintainability of the proceedings in view of the fact that the complainant and the respondents are neither members of the shared household nor are in the domestic relationship.

5 Perused the application. The issues proposed by the Petitioner are as follows :

(a) Whether this court has jurisdiction to entertain and try the present application ?

(b) Whether the application is maintainable according to law?

(c) Whether the application is barred by principle of res judicata ?

The proposed issues did not indicate that a specific issue as to whether the complainant and the respondents were members of the shared household or in domestic relationship needs to be framed. By an order dated 17/11/2011 the said application was rejected by the learned Magistrate holding therein that there is no need to frame preliminary issue about the maintainability of the petition. The learned Magistrate has taken into consideration the intention of the

legislature while enacting the Protection of Women from Domestic Violence Act. The learned Magistrate has committed an error by holding that the proceedings under Domestic Violence Act has to be tried as that of the proceedings under Section 125 of the Code of Criminal Procedure, 1973. Section 12(5) of the Act also contemplates that the Magistrate shall endeavour to dispose of every application under the act within a period of 60 days from the date of its first hearing.

6 It is pertinent to note that in the present case by an order dated 31st August, 2015 this Court had made clear that the pendency of this petition shall not be construed as a stay to the proceedings however, the learned Magistrate has failed to proceed with the matter since the petition was pending before this court.

7 Being aggrieved by the order passed by the Judicial Magistrate First Class dated 17/11/2011, the petitioner herein had filed Criminal

Revision Application No. 663 of 2011. However, the learned Sessions Judge has stated the same as an appeal and has dismissed the said appeal. The revisional court has considered submissions of the parties to the concerned petition. It was rightly observed that the petitioner had raised issue of maintainability and jurisdiction of the Court.

8 It is true that the petitioner had not prayed before the court to frame an issue as to whether the parties to the petition were in domestic relationship or as to whether they lived in shared household. The proposed issues were vague to challenge the very jurisdiction of the court to try the proceedings and hence, it cannot be said that the subordinate courts have committed an error by rejecting the said application.

9 The issue as to whether the parties to the proceedings are living in shared household or were in domestic relationship so as to invoke the jurisdiction under the provisions of Protection of the Women from

Domestic Violence Act would go to the very root of the matter for the simple reason that the section 2(a) defines "aggrieved person" as-

“2 (a) “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.”

Section 2(f) of the said act defines “domestic relationship” as-

“2(f) “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.”

In view of this, it was incumbent upon the court to frame preliminary issue and decide the same before commencement with the recording of evidence.

10 Hence, this Court is of the opinion that the issue be framed and treated as preliminary issue. Learned Magistrate shall frame the issue to that effect within 3 weeks from the date of receipt of this order.

11 The Rule is made absolute in the above terms. It is made clear that the learned Magistrate shall not be influenced by the observations made by this court as well as the revisional court and shall frame the issue and decide the same on its own merits after giving fair opportunity to both the parties to demonstrate the maintainability of the revision.

12 The Writ Petition is disposed of accordingly.

Office to communicate this order to the concerned court.

(SMT. SADHANA S. JADHAV,J)