

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION NO.101 OF 2017

Shri.Vitthal D. Chikne & Ors. ... **Applicants**

V/s.

Sou.Anita Vitthal Chikne & Ors. ... **Respondents**

.....

Mr.Kiran A. Nikam, Advocate for the Applicants.

Ms.Veera Shinde, APP for the Respondent/State.

....

CORAM : A.M.BADAR J.

DATED : 4th DECEMBER 2017.

P.C. :

1 The Revision Petitioners are original respondents in the proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “D.V.Act” for the sake of brevity). By this revision petition, they are challenging the Judgment and Order dated 07/05/2016 passed by the learned Judicial Magistrate First Class, Medha, Taluka Jawali in Criminal Miscellaneous Application No.28 of 2012 and Judgment and Order dated 24th November 2016 passed by the Additional Sessions Judge, Satara in Criminal Appeal bearing No.20 of 2016. The learned trial Magistrate was pleased to allow the application of respondent Nos.1 and 2 herein i.e. an

aggrieved person and her daughter partly. The revision petitioners were injuncted from committing any act of domestic violence against an aggrieved person and her daughter by the learned trial Magistrate. The learned trial Magistrate had directed the revision petitioner No.1/husband to pay maintenance to his wife i.e. respondent No.1 herein at the rate of Rs.3,000/- per month. Similarly, the revision petitioner No.1/father was directed to pay maintenance of Rs.2,000/- to the respondent No.2/daughter. The maintenance was directed to be paid from the date of moving the application under Section 12 of the D.V.Act. In addition, the revision petitioners were directed to pay compensation of Rs.40,000/- to the respondent Nos.1 and 2 herein i.e. an aggrieved person and her daughter. It is further directed that the revision petitioners to return the *stridhan*. This Judgment and Order of the learned trial Court dated 07/05/2016 came to be confirmed in Criminal Appeal by the learned Additional Sessions Judge, Satara on 24th November 2016.

2 Herd the learned Advocate appearing for the revision petitioners/original respondents. He vehemently argued that the so called grocery shop is closed because of dispute between family of the aggrieved person as well as the family of the husband. The learned Advocate for the revision petitioners further argued that the revision petition No.1/husband is a mathadi worker having no fix salary. His wages depend on quantum of work and being a

piece rated worker, he has no guaranteed income. It is further argued that revision petitioner No.1 had taken a house loan apart from a loan from Annasaheb Patil Co-operative Credit Society. Reliance is also placed on salary certificate of the revision petitioner No.1/husband to point out that he earns a meager salary. The learned Advocate further argued that evidence of the aggrieved person shows that she was unable to give description of the agriculture land held by the revision petitioners and she has also accepted the fact that brother of her husband was having a Tobacco and Grocery shop and now that shop is closed. With this, the learned Advocate argued that the impugned Judgments and Orders need to be quashed and set aside.

3 I have carefully considered the submissions so advanced and also perused the application under Section 12 of the D.V.Act moved by the respondent Nos.1 and 2 i.e. an aggrieved person and her daughter Ruchika. It was case of the applicants before the trial Magistrate that at the time of marriage, parents of the aggrieved person had given gold bracelet weighing two and half tolas and ear-wears totally weighing three tolas. It is further pleaded in the application under Section 12 of the D.V.Act that respondents therein are having a grocery shop namely Kaleshwari General Stores at Gat No.129. The land on which this shop is situated is owned by father of the aggrieved person. In paragraph 3-A of the application, acts of domestic violence are pleaded by the

aggrieved person. Similarly, the same is also pleaded in other paragraphs of the application. The aggrieved person categorically pleaded that other family members of her husband were dependent on her husband. There is pleading to the effect that the revision petitioner No.1 is working as a mathadi worker and earning Rs.17,000/- to 18,000/- per month.

4 It appears that the application was suitably replied and the parties adduced their evidence. The aggrieved person namely Anita Chikne deposed in tune with pleadings in her application and has stated that the respondents in the domestic violence proceedings are owners of the grocery shop named Kaleshwari General Stores as well as agriculture lands of which Survey Nos. are mentioned in her deposition. She further deposed that her husband i.e. revision petitioner No.1 is earning wages of Rs.30,000/- to 35,000/- per month by working as mathadi worker. Her cross-examination reveals that she has stated the Survey Nos. of the agriculture lands owned by her in-laws. She is unable to tell Gat Nos. of the same. The aggrieved person further admitted that the shop which her in-laws were having on the land of her husband is now closed.

5 In support of her claim, the aggrieved person also examined Sudhakar Jaising Khopade from the Mathadi Board. His evidence reveals that if mathadi worker do work in full capacity,

he can earn salary of Rs.18,000/-. However, in cross-examination, this witness has accepted the fact that the mathadi worker is paid as per quantum of work done by him.

6 Certificates showing wages earned by the revision petitioner No.1/husband were placed on record of the learned trial Court and those were duly proved. Wages certificates show that in the year 2007-08, the husband earned wages of about 1,45,000/-, whereas he earned wages of Rs.1,84,000/- in the year 2009-2010. In the year 2010-2011, the husband earned Rs.1,69,000/-. In the year 2011-2012, wages earned by the husband were about 1,55,000/-. In the year 2014-2015, the revision petitioner No.1 earned wages of Rs.2,28,000/-. From April 2015 to October 2015, his earnings from wages were around Rs.1,32,000/-. In December 2015, the husband was in arrears of Rs.2,16,500/- payable to Annasaheb Patil Mathadi Workers Co-operative Credit Society. He had also taken housing loan and was paying installment of about Rs.4,420/- per month.

7 Considering this evidence, adduced by the parties, the learned trial Magistrate came to the conclusion that the aggrieved person as well as her daughter, born from the revision petitioner No.1, are entitled for maintenance of Rs.3,000/- and Rs.2,000/- per month respectively from the date of application apart from compensation of Rs.40,000/-. The learned trial Court upheld this

Order granting maintenance as well as compensation apart from injuncting the respondents in the original proceedings from committing acts of domestic violence. Careful perusal of evidence adduced by the parties on record and made available for perusal goes to show that the aggrieved person and her daughter are residing separately from the revision petitioner No.1/husband. The version of the aggrieved person reveals commission of domestic violence. The earnings of the husband are duly proved by the aggrieved person. The loan taken from the Co-operative Credit Society and the housing loan are not eligible deductions from the monthly earnings of the revision petitioner. What can be deducted from the monthly earnings are deductions, which are statutorily made from wages earned by an employee. So income of the husband will have to be taken as it is as his salary certificate does not show that he is liable to pay anything towards statutory deduction from his wages. The ultimate Order for grant of maintenance is to the tune of Rs.3,000/- per month for the wife and Rs.2,000/- per month to a daughter, who is taking school education being a minor.

8 Quantum of maintenance always rests on discretion of the learned trial Magistrate. Unless and until it is shown that the discretion is arbitrarily and perversely exercised, the revisional Court is not entitled to interfere with the impugned Orders. In the case in hand, fact finding Courts have concurrently held that there

was an act of domestic violence on the aggrieved person and her daughter. The Courts below have concurrently held that the aggrieved person and her daughter are unable to maintain themselves. The impugned Order of the trial Magistrate do show that the learned trial Magistrate has taken into consideration the daily needs of the aggrieved person and her daughter. The wages earned by the revision petitioner No.1 were duly taken into consideration while awarding the maintenance as well as compensation for commission of acts of domestic violence.

9 It was urged that separate maintenance is also granted to the accused persons and her daughter in proceedings under Section 125 of the Code of Criminal Procedure. At this juncture, it needs to be mentioned that Section 36 of the D.V.Act makes it clear that the provisions of the D.V.Act are in addition to and not in derogation of the provisions of any other law. Section 20(d) of the D.V.Act makes it clear that award of maintenance thereunder is in addition to the maintenance under Section 125 of the Code of Criminal Procedure.

10 Perusal of the material placed on record does not allow me to hold that the learned Courts below have committed any error of law or the impugned Judgments and Orders suffer from perversity. The discretion exercised by the Courts below is in consonance with the evidence adduced by the parties on record. In

this view of the matter, there is no scope for interference in the findings of the facts recorded by the Courts below in the revisional jurisdiction of this Court. The revision petition is, therefore, dismissed.

(A.M.BADAR J.)