

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.1439 OF 2017

Rahul Ashok Waske & Ors.

...Petitioners

Versus

Sou. Sarika Rahul Waske & Anr.

...Respondents

.....

Mr. Sandeep S. Koregave for the Petitioners.

Mrs. N.S. Jain, APP for the Respondent No.2-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 16th NOVEMBER, 2017.

P.C.:-

The Petitioners herein have challenged the order dated 13th February, 2017 whereby the learned 12th Judicial Magistrate, First Class, Kolhapur has dismissed the application filed by the Petitioners herein challenging the jurisdiction of the Court to entertain the application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'DV Act').

2. Heard Mr. Sandeep Koregave, the learned counsel for the Petitioners.

3. The Petitioner No.1 and the Respondent No.1 were married

on 1.6.2009. After the marriage both of them were residing in the matrimonial house in village Kale, Taluka-Karad, District-Satara and thereafter at Mumbai. A child was born to them on 5.10.2010. The matrimonial dispute resulted in the Respondent No.1 filing proceedings under Section 12 of the DV Act being PWDVA No.26/2015 in the Court of Judicial Magistrate, First Class, Kolhapur, wherein she has sought maintenance, permanent custody of the child as well as protection and residence order. The Respondent has also sought interim maintenance for herself and the minor child.

4. The Petitioner has claimed that the Respondent is not residing at the address mentioned in the application and that the learned Judicial Magistrate, First Class, Kolhapur has no jurisdiction to entertain the said application. By application dated 19th December, 2015, the Petitioner filed an application to treat the jurisdictional issue as preliminary issue. The learned Trial Judge has held that the wife and children cannot be deprived of interim relief on the basis of piecemeal objections and hence dismissed the said application to decide the jurisdictional issue before considering the application for interim relief. Rejection of the said application has resulted in filing of the present Petition.

5. Mr. Sandeep Koregave, the learned counsel for the Petitioner submits that the Respondent is not residing at the address given in the cause title. He submits that if the contention of the Petitioner is accepted, the learned Judicial Magistrate, First Class, Kolhapur, will have no jurisdiction to entertain the application for interim maintenance. He therefore, contends that the jurisdictional issue is required to be adjudicated before considering the application for interim maintenance.

6. Section 27 (1) (a) of the DV Act confers jurisdiction on the Judicial Magistrate, First class or the Metropolitan Magistrate, as the case may be, within the local limits of which the person aggrieved permanently or temporarily resides or carries on business or is employed.

7. In the instant case, in the cause title the Respondent No.1-wife has given her address as 724, Plot No.12 'A' Ward, Vijay Nagar, behind old Vashi Naka, Kolahpur. In paragraph 14 of the said application she stated that she has been residing at the said address, which is within the local jurisdiction of the learned Judicial Magistrate,

First Class, Kolhapur. The impugned order reveals that the Respondent No.1 herein had also filed an affidavit of the owner of the said house, who had stated that the Respondent No.1-wife herein has been residing in the said house prior to filing of the application.

8. Thus, the averments made in the application under Section 12 of the DV Act prima facie reveals that the Respondent No.1-wife has been temporarily residing within the local jurisdiction of learned Judicial Magistrate, First Class, Kolhapur. Consequently, prima facie, learned Judicial Magistrate, First Class, Kolhapur has jurisdiction to entertain the application.

9. It has to be borne in mind that the Domestic Violence Act was enacted with an object of providing more effective protection to the rights of women, who are victim of violence within the family. This Act also empowers the Magistrate to pass interim or ex-parte order, if on the basis of the affidavits, he is satisfied that there is likelihood of commission of acts of domestic violence. The Court while considering the application for interim relief is certainly required to consider the averments in the application and decide whether it has territorial jurisdiction to entertain the application. The Court is required to

undertake this exercise as to guard itself against likely misuse of its jurisdiction and to prevent the abuse of process of the Court. Suffice it to state that formation of such opinion at pre evidence stage is only prima facie and subject to the final adjudication. Considering a full fledged inquiry at this stage would deprive the aggrieved persons of the urgent reliefs and will thus defeat the very object of the Act.

10. Considering the above facts and circumstances, the learned Magistrate was justified in taking a prima facie view of the matter on the issue of jurisdiction. The order does not suffer from any illegality or perversity. The Petition has no merits and is therefore, dismissed. It is however, made clear that in the event the Petitioner has raised the issue of jurisdiction, the learned Magistrate shall frame the said issue and decide the same on merits alongwith other issues. The order passed on interim application shall be subject to final adjudication.

(ANUJA PRABHUDESSAI, J.)