

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3866 OF 2015

Mrs. Poonam Jeevan Darne

.... Petitioner

Versus

Shri Jeevan Vibhakar Darne & Anr.

.... Respondents

Mr. M.P.Panchakshari for Petitioner.

Mrs. Anamika Malhotra, APP for Respondent No.2/State.

CORAM : RAVINDRA V. GHUGE, J.
DATE : MARCH 15, 2017.

P.C.

1. The Petitioner is aggrieved by the judgment dated 3/9/2015 delivered by the learned Appeal Court at Thane in D.V.Criminal Appeal No. 50 of 2015, by which it has concluded that the trial court has no jurisdiction to deal with the pending complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

2. I have heard the learned Advocate for the Petitioner and the learned APP on behalf of the Respondent/State.

3. Despite service of court notice on the Respondent No.1 who is the Appellant before the Appeal Court, no appearance

has been entered, either through an Advocate or in person. This matter was not taken up for hearing, since the Respondent no.1 after service had not appeared.

4. It is in the above stated circumstances that I have heard the learned Advocates.

5. The Petitioner has preferred an Application under Section 12 read with Sections 18, 19 and 20 of the Protection of Women from Domestic Violence Act before the trial court. The Respondent No.1 who is the husband of the Petitioner moved an Application below Exh.33 praying for the dismissal of the main application on the ground that the trial court at Thane has no jurisdiction. Reliance was placed upon Section 27 of the Protection of Women from Domestic Violence Act to contend that the claimant was not residing at the place where the proceedings were instituted.

6. By order dated 20/3/2015, the learned Judicial Magistrate First Class, Thane rejected the Application Exh. 33 after concluding on the basis of the record that the Performance Record/Report Card as well as the xerox copies of the Receipts of the payment of the fees to Dnyan Sadhana Vidya Niketan English School, Thane would indicate that the child namely, Atharva Darne was taking education at Thane. The residence of the Petitioner at the relevant time at Thane was thus established.

7. The Respondent No.1 preferred an appeal before the Appellate Court at Thane challenging the rejection of Application Exh.33. It is during the pendency of this proceeding that the Petitioner is said to have shifted to her parents home at Murud-Janjira. The child was therefore admitted to the School at Murud-Janjira which does not fall within the limits of Thane district. The Appellate Court disbelieved the progress card of the child in relation to the time when the original proceedings were instituted before the trial court. During the pendency of the proceedings, as the Petitioner changed her residence, the Appellate Court concluded that there is no evidence that she was residing at Thane.

8. It does not appear from the impugned order passed by the Appellate Court that it has considered the receipts of payment of fees and the progress report of the child who was taking education at the School in Thane. It also does not appear that the Appellate Court has properly looked into the record which may indicate that the child was taking education at Thane when Miscellaneous Application No. 223 of 2013 was instituted by the Petitioner.

9. Respondent No.1, though has not appeared before this Court through an Advocate or in person, has entered an affidavit dated 13/10/2016 in this proceeding taking a stand that the Petitioner is presently residing at Murud-Janjira.

10. Considering the above, this Petition is partly allowed. The impugned judgment dated 3/9/2015 is quashed and set aside.

11. D.V.Criminal Appeal No. 50 of 2015 stands remitted to the learned 2nd Additional Sessions Judge, Thane for hearing afresh. The Petitioner and Respondent No. 2 shall appear before the Appeal Court on 7th April, 2017.

12. The Appeal Court shall issue notice to the Respondent No.1 herein who is the original appellant before the Appeal Court. It is expected that the learned 2nd Additional Sessions Judge, Thane shall consider the school record and other such material as may be available while deciding the appeal keeping in view that the school record pertains to the period when Miscellaneous Application No. 223 of 2013 was instituted before the learned Judicial Magistrate First Class at Thane.

13. The learned Appeal Court shall make an endeavour to decide the said appeal afresh, as early as possible and preferably within a period of six months from the date of the appearance of Respondent No.1/Original Appellant.

(RAVINDRA V. GHUGE, J.)