

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

CRIMINAL REVISION APPLICATION NO. 48 OF 2018

Mr. Aniruddha Rameshchandra Bargaje
Age 35 Yrs. Occupation – Doctor
R/o Nisarg, 10, Priyadarshani Housing
Society, Wai, Diddhnath Wadi, Tal. Wai
Dist. Satara

... Applicant

Versus

- 1] State of Maharashtra
- 2] Sou. Tanvi @ Priyadarshani Anirudha Bargaje
Age 35 , Occupation – Doctor,
R/o Shri Hanmant Bharmaji Dhage
Shrikunj, Mahadik Vasahat, Kolhapur.
- 3] Shri Rameshchandra Ambadas Bargaje
Age 65, Occu. Retired,
- 4] Sou. Sheela Rameshchandra Bargaje
Age 58, Occu. Service,
No. 3 and 4 R/o Nisarg, 10,
Priyadarshani Housing Society Ltd. Wai,
Diddhnath Wadi, Tal. Wai, Dist. Satara

... Respondents

**WITH
CRIMINAL REVISION APPLICATION NO. 74 OF 2018**

- 1] Shri Rameshchandra Ambadas Bargaje
Age 65, Occu. Retired,
- 2] Sou. Sheela Rameshchandra Bargaje
Age 58, Occu. Service,
No. 1 and 2 R/o Nisarg, 10,
Priyadarshani Housing Society Ltd. Wai,
Diddhnath Wadi, Tal. Wai, Dist. Satara

... Applicants

Versus

- 1] State of Maharashtra
- 2] Sou. Tanvi @ Priyadarshani Anirudha Bargaje
Age 35 , Occupation – Doctor,
R/o Shri Hanmant Bharmaji Dhage
Shrikunj, Mahadik Vasahat, Kolhapur.
- 3] Mr. Aniruddha Rameshchandra Bargaje
Age 35 Yrs. Occupation – Doctor
R/o Nisarg, 10, Priyadarshani Housing
Society, Wai, Diddhnath Wadi, Tal. Wai
Dist. Satara. ... Respondents

**WITH
CRIMINAL REVISION APPLICATION NO. 102 OF 2018**

Sou. Tanvi @ Priyadarshani Anirudha Bargaje
Age 35 , Occupation – Doctor,
R/o Shri Hanmant Bharmaji Dhage
Shrikunj, Mahadik Vasahat, Kolhapur. ... Applicant

Versus

- 1] State of Maharashtra
- 2] Mr. Aniruddha Rameshchandra Bargaje
Age 36 Yrs. Occupation – Doctor
- 3] Shri Rameshchandra Ambadas Bargaje
Age 64 Years, Occu. Retired,
- 4] Sheela Rameshchandra Bargaje
Age 59, Occu. Service,
No. 2 to 4 R/o Nisarg, 10,
Priyadarshani Housing Society Ltd. Wai,
Diddhnath Wadi, Tal. Wai, Dist. Satara ... Respondents

Mr. Indrajeet Joshi I/by Nalavade And Chavan law Associates for the Applicants in Revision No. 74 of 2018 and Revision No. 48 of 2018 and for Respondent Nos. 2 & 3 in Revision No. 102 of 2018.

Mr. J. P. Yagnik, APP for Respondent No.1 in all Criminal Revisions.

Mr. Shekhar A Ingawale for Respondent No.2 in Revision No. 74 of 2018 and Revision No. 48 of 2018 and Applicant in Revision No. 102 of 2018.

CORAM : PRAKASH D. NAIK, J.
DATE : MARCH 9, 2018.

P.C. :-

. All these Criminal Revision Applications are arising out of the proceedings under the Protection of Woman from Domestic Violence Act, 2005.

2. The Application under Section 12 of the Protection of Woman from Domestic Violence Act, 2005 was preferred by Smt. Tanvi @ Priyadarshani Aniruddha Bargaje (Respondent No.2 in Criminal Revision Application No. 48 of 2018). The said Revision Application is preferred by the husband of the Respondent No.2 therein Shri Aniruddha Rameshchandra Bargaje. The Revision Applicant has challenged the order dated 22nd December 2016 passed by 9th Judicial Magistrate First Class, Kolhapur in Criminal Misc. Application No. 94 of 2016 as well as the order dated 23rd November 2017 passed by the Additional Sessions Judge, Kolhapur in Criminal Appeal No. 22 of 2017.

3. Criminal Revision Application No. 74 of 2018 is preferred by the father-in-law and mother-in-law of Smt. Tanvi Bargaje. The said Applicants have assailed the order dated 22nd December 2016 passed by 9th Judicial Magistrate First Class, Kolhapur below Exh.4, 9 and 25 and order dated 23rd November 2017 passed by the Additional Sessions Judge, Kolhapur in Criminal Appeal Nos. 9 of 2017 and 10 of 2017. Whereas Criminal Revision Application No. 102 of 2018 is preferred by Smt. Tanvi @ Priyadarshani Bargaje being aggrieved by the order dated 23rd November, 2017 passed by the Additional Sessions Judge, Kolhapur in Criminal Appeal No. 31 of 2017 and order dated 22nd December 2016 passed by 9th Judicial Magistrate First Class, Kolhapur in Criminal Misc. Application No. 94 of 2016. The said Applicant is aggrieved by the orders of the subordinate courts in not granting all the reliefs sought by her.

4. The original Applicant [Smt. Tanvi @ Priyadarshani Bargaje] had initiated the proceedings under Section 12 of the Protection of Woman from Domestic Violence Act [hereinafter referred to as 'D.V.Act']. The said application was preferred against the husband, father-in-law and mother-in-law. The Application was preferred on 7th June 2016. The trial court took cognizance of the said Application. The original Applicant also submitted Affidavit in support of the Application for interim reliefs. She preferred an Application seeking interim orders which was numbered as

P.W.D.V.A. Application No. 94 of 2016. In the said Application the Applicant therein has prayed for several reliefs, such as, prohibiting the Opponents therein from causing any act of domestic violence to the said Applicant, restraining the Opponents from selling or alienating or creating third party interest over the properties mentioned therein till the decision of the main Application, to handover the ornaments, clothes etc., to secure alternate accommodation or to pay rent to the said Applicant and to pay maintenance to the Applicant and her son till the decision of the main Application. The Application was opposed by filing say at the instance of father-in-law and mother-in-law of original Applicant who were arraigned as Opponent Nos. 2 and 3 in the said Application.

5. The learned Magistrate by order dated 22nd December 2016 partly allowed the Application Exh. 4 and rejected the Application Exh. 25. The Opponent No. 1 (husband) was directed to pay an amount of Rs. 20,000/- per month to the original Applicant from the date of the order vide Section 20 of the D.V.Act. The Opponent No.1 was also directed to return stridhan/goods/documents enlisted in notice dated 14th January 2016 except Maruti 800 car to the original Applicant. All the Opponents were prohibited from committing any act of domestic violence as enumerated under Section 18 of the Act.

6. In pursuant to the order dated 22nd December 2016, the Opponent No. 1 preferred Criminal Appeal No. 22 of 2017 before the Sessions Court at Kolhapur challenging the order dated 22nd December 2016 . The Opponent Nos. 2 and 3 [father-in-law and mother-in-law of original Applicant] preferred Criminal Appeal Nos. 9 of 2017 and 10 of 2017 before the Sessions Court, Kolhapur challenging the aforesaid order. The original Applicant also preferred Criminal Appeal No. 31 of 2017 before the Sessions Court being aggrieved by the refusal of certain reliefs prayed by her before the trial court. The learned Additional Sessions Judge, Kolhapur by order dated 23rd November 2017 dismissed the Appeals preferred by all the Revision Applicants. Being aggrieved by the aforesaid orders, the Applicants have approached this Court by preferring the present Revision Applications.

7. The learned Counsel for the Revision Applicant in Criminal Revision Application Nos. 48 of 2018 and 74 of 2018 submitted that both the courts below have committed an error in passing the impugned orders. The Revision Applicants have not committed any act amounting to domestic violence. There is no evidence to initiate proceedings against the Applicants in Criminal Revision Application No. 74 of 2018. The order passed by the Sessions Court in Criminal Appeals are bad in law. The original Applicant has left her matrimonial home on her own accord in

June 2014 and that the Application under Section 12 of the D.V.Act was filed in June 2016. Thus there is considerable delay of two years in initiating the said proceedings. The marriage between the original Applicant and the Opponent No.1 [Revision Applicant in Criminal Revision Application No. 48 of 2018] was performed on 13th December 2006. The wife left the matrimonial home and started residing with her parents along with the child. The Opponent No. 1 [husband] issued notice for consent divorce through his Advocate to the original Applicant. The said notice was replied belatedly. Thereafter the complaint was filed on 4th June 2016 against the husband and in-laws at Wai Police Station under Sections 498-A, 313, 323, 504, 506 r/w 34 of Indian Penal Code. The impugned proceedings were initiated thereafter on 7th June 2016.

8. It is submitted that the allegations in the FIR were general in nature, but in the proceedings under the D.V.Act, the Applicant therein had exaggerated the allegations. The allegations made in the Application under the D.V.Act was not supported by any evidence. The Application for maintenance was preferred belatedly which show that she is not in need of maintenance. The trial court has ignored the evidence putforth by the Opponents showing that the original Applicant, who is medical professional is earning her livelihood by practicing as a Dentist in the Clinic of which the photographs were placed before the Court. The original Applicant did

not file on record any documentary evidence to support her claim regarding the income of the Opponent No.1, however, the trial court had arrived at erroneous conclusion that he is having sufficient source of income and is able to maintain the original Applicant and thereby directed to pay interim maintenance of Rs. 20,000/- per month to her. The appellate court has also committed an error in confirming the order of the trial court. The Application under the D.V.Act was filed with a view to cause harassment to the Opponents. It is also submitted that there was no evidence to establish that there was domestic violence of any nature whatsoever, and therefore, the trial court as well as the Appellate Court has committed an error in passing the impugned orders.

9. The learned Counsel for the original Applicant i.e. Respondent No.2 in Criminal Revision Application No. 48 of 2018 and Criminal Revision Application no. 74 of 2018 strongly opposed the relief sought by the aforesaid Revision Applicants. It is submitted that the trial court has only granted the relief in application for grant of interim reliefs and the main application is still pending before the court. Prima facie case was made out for granting relief. The instances reflected in the Application under Section 12 of the D.V.Act prima facie indicate that the Opponents therein were indulging in acts amounting to domestic violence. The Opponents have failed to establish that the original Applicant is having any

source of income. She is required to look after her as well as the child. The original Applicant has placed on record the material which was sufficient to grant her protection.

10. By preferring independent Criminal Revision Application No.102 of 2018, the original Applicant has prayed for the other reliefs which were not granted by the trial court and not considered by the Sessions Court in Appeal. It is submitted that the courts below ought to have considered grant of other reliefs which were prayed by the said Applicant. The courts below ought to have considered the prayer of the original Applicant for alternate accommodation or house rent under Section 19 (i) (f) of the D.V.Act, particularly when the Respondents drove her out of the house along with her five years old son in June-2014. It is submitted that the said Applicant and minor son are staying at the mercy of her parents, whereas the Opponents are enjoying a luxury of the bungalow-flat and also purchased the landed property from the income of the clinic run by Opponent No.1. Trial court has not considered the relief for alternate accommodation or house rent in proper perspective.

11. It is further submitted that the Opponent No.1 [husband] did not bother to inquire about the Applicant and her minor son and on the contrary he forwarded a notice of divorce. It is submitted that the original Applicant has no alternate arrangement to maintain herself and her minor

son, and therefore, she preferred the Application for maintenance. The Opponent No.1 has not deposited any single penny in her account. She was ousted from the matrimonial home. The courts below failed to appreciate that the order of interim maintenance ought to have been passed from the date of Application. The courts below also failed to consider that she was driven out of matrimonial home in June-2014 and since then she has no source of income. It is also contended that the maintenance granted by the trial court is very low, considering the economic condition and living standard of the Opponents. It is, therefore, submitted that the relief sought in Criminal Revision Application No. 102 of 2018 be granted and the Revision Applications preferred by the Revision Applicants in Criminal Revision Application Nos. 48 of 2018 and 74 of 2018 may be rejected.

12. On going through the documents on record, it is apparent that the original Applicant [wife] had preferred Application bearing No. 94 of 2016 under Section 12 of the D.V.Act, wherein several instances of harassment and violations are reflected. During the pendency of the said Application she also preferred an application for interim relief which includes the protection from causing domestic violence, not to create third party interest in the properties, to handover the ornaments, articles etc., to secure same level of alternate accommodation and to pay maintenance to the original Applicant and her son in the sum of Rs. 25,000/- each. By

order dated 7th June 2016, the trial court observed that, Application prima facie discloses that, the applicant was subjected to domestic violence by non-applicants. Notice was issued to the non-applicants and the court also called for Domestic Incident Report from Protection Officer. The original applicant also filed affidavit in support of her application. Application vide Exh. 4 was preferred for interim reliefs. Application Exh. 9 was preferred for restraining opponents from alienating properties. Application Exh. 25 was filed by non-applicant Nos. 2 and 3 to drop proceedings against them.

13. The Application under Section 23(2) of the D.V.Act supported by the Affidavit. The trial court was satisfied prima facie and granted the reliefs as reflected in order dated 22nd December 2016. The original Applicant is aggrieved by the fact that all the reliefs sought in her application more particularly for alternate accommodation were not granted by the trial court and the Appellate Court. The Application under the D.V.Act refers to several instances of purported harassment and violence which were also reiterated in the interim application. I do not think it necessary to repeat the averments made in the Application by the original Applicant. The Opponent No.1 did not file any reply to the interim application, however, the Opponent Nos. 2 and 3 opposed the reliefs by filing reply. The trial court was pleased to observe that in support of the Application, the original Applicant has filed the Affidavit on record and

affirmed the contents on oath. The Opponent No.1 did not counter the averments with regard to the domestic violence and the source of income.

14. The court observed that the Opponent No.1 is a doctor by profession. He is having his own clinic. Prima facie it is indicated that he is having source of income and is able to maintain the original Applicant. Although the original Applicant is a Dentist by profession, there is no evidence to show that she is conducting the clinic and considering the nature of her profession, infrastructure is required to run the clinic. Considering the age of the son, it may not be possible for the original Applicant to run the clinic or to earn by rendering medical services though she is doctor by profession. The court further observed that having regard to the nature of the proceedings primary object is to secure relief to deserted and destitute wife to ensure that she should not be left destitute in the society. It will take time to decide the main application and thereby the Applicant is entitled for interim maintenance. The court took into consideration the status of the parties and the expenses required for education etc. and observed that the Applicant is entitled for interim maintenance of Rs. 20,000/- per month. Considering the factual aspects, the court also granted the other interim relief stipulated in order dated 22nd December 2016. The court also assigned the reasons for not granting the other reliefs which are sought by the original Applicant.

15. The Opponent Nos. 2 and 3 have prayed for discharge which was also not granted. In paragraph 33 of the order dated 22nd December 2016 the court observed that the Application prima facie discloses that the Opponent No.2 had withdrawn the amount from the account of the original Applicant. Properties more particularly described in para 30 of the application were purchased in the name of Opponent Nos. 2 and 3. The court also considered grievance of the original Applicant that her income is also utilized for purchase of the said properties and that Opponent No.2 had signed consent form of abortion. The court analyzed all the aspects and passed the order dated 22nd December 2016. It is apparent that all the parties aggrieved by the said order had preferred Appeals before the Sessions Court which were rejected vide order dated 23rd November 2017.

16. I have also gone through the contents of the common order passed by the Sessions Court in the Criminal Appeals preferred by the respective parties. I do not find any reason to disturb the findings of the appellate court. The Appeals preferred by the Revision Applicant in Criminal Revision Application No. 48 of 2018 and Criminal Revision Application No. 74 of 2018 were devoid of merits and the same were rejected. Similarly, the relief sought by the original Applicant being aggrieved by not granting of the reliefs and for enhancement of the

maintenance were also rightly dealt with and rejected by the Sessions Court.

17. Considering the aforesaid scenario which has to be considered that prima facie case was made out by the original Applicant for grant of reliefs as stipulated in order passed by the trial court. The original Applicant had produced documentary evidence to show that there is substance in her allegations. She also produced account statements which shows that there is possibility of her contribution in purchase of properties by opponent Nos. 2 and 3. The main Application is still pending before the court. On scrutiny of the evidence, prima facie case is made out for granting relief to the original Applicant. However, at this stage, she was not entitled for the relief which was sought by her by preferring appeal before the Sessions Court and Revision Application before this Court. The original Opponent No.2 and 3 have sought discharge which was not granted and the Appeal against the said order is also dismissed. Prima facie case was made out even against them to take cognizance of the Application under Section 12 of the D.V.Act. Considering the nature of Application and the material on record no case was made out for dropping the proceeding against them. Nothing was produced to show that, the original Applicant has any source of income. The opponent No.1 has his clinic in village Wai. The trial court and the appellate court considered the standard of living of

the parties and granted maintenance to the said Applicant. The reasons were assigned for not granting maintenance from the date of application. Considering the fact that the order under challenge was an interim order, no case is made out for interfering in the said order.

18. In the light of the aforesaid circumstances, I do not find any substance in the Applications preferred by the parties. The appellate court has rightly dismissed the Appeals. Hence, I pass the following order.

ORDER

- (1) Criminal Revision Application Nos. 48 of 2018, Criminal Revision Application No. 74 of 2018 and Criminal Revision Application No. 102 of 2018 are dismissed.
- (2) It is clarified that the trial court while adjudicating the main Application shall not be influenced by the observations made in this order.
- (3) All the Criminal Revision Applications are disposed of accordingly.

PRAKASH D. NAIK, J.