

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.4512 OF 2017

Hasan Usman Shejwalkar and another ... Petitioners
Vs.
State of Maharashtra and others ... Respondents

Mr. M. S. Adenwala a/w. Ms Prajakta Sawant for Petitioners.
Ms Megha Bajoria i/b. Mr. Kuldeep S. Patil for Respondent No.2.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 28, 2018

P.C. :

Heard Mr. Adenwala, learned Counsel for petitioners and
Ms Bajoria, learned Counsel for respondent No.2.

2. By this Petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), petitioners have challenged - (i) the judgment and order dated 28.07.2017 passed by the learned Judicial Magistrate, First Class, Panvel in Criminal Miscellaneous Application No.423 of 2013; (ii) orders dated 28.08.2017 and 13.09.2017 passed by the learned Additional Sessions Judge, Raigad, Alibaug in Criminal Appeal No.79 of 2017. By order dated 28.07.2017, the learned Magistrate allowed the application made by the respondent No.1 and issued directions in the following terms:

“ ORDER

1. The application is allowed.
2. The respondent is hereby prohibited from committing any act of domestic violence, aiding or abating in the commission of domestic violence to the applicant as per section 18 of the Protection of Women from Domestic Violence Act, 2005.
3. The applicant is granted the right to reside in the shared

household i.e. in flat no.1003, Bhoomi Heights, Section 8, Kharghar along with her children in view of section 17 of Protection of Women from Domestic Violence Act.

4. The respondent is hereby restrained from dispossessing or in any other manner disturbing the possession of the applicant from the shared household.

5. The respondent is hereby directed to remove himself from the shared household with his personal belongings i.e. bedding and clothing only.

6. The respondent shall reinstate the applicant in the shared household within the period of one month from the date of this order.

7. The respondent is hereby restrained from alienating or disposing of the shared household or encumbering the same.

8. The respondent do pay the amount of Rs.15,000/- (Rs.Fifteen Thousand only) to the applicant as maintenance per month as per Section 20 of the Protection of Women from Domestic Violence Act, 2005 from the date of this order.

9. The copy of order be given to the parties free of cost.

10. The copy of order be sent to Protection Officer, to the Police Station and service provider if any.

11. The officer in-charge of the nearest Kharghar police station and the Protection Officer are directed to assist the applicant in the implementation of residence order.”

3. Aggrieved by this decision, respondent No.3 herein filed Criminal Appeal No.79 of 2017 in the Sessions Court at Alibaug. By order dated 28.08.2017, the learned Additional Sessions Judge partly allowed the application for stay in the following terms:

“ ORDER

1. The stay application is partly allowed on following terms:

- (i) The relief clause Nos.2, 3, 7, 8 will remain intact.
- (ii) However, the Court thinks fit to stay the operative order of relief clause No.5.
- (iii) The wife and children are allowed to reside in shared household as per relief clause No.3.
- (iv) The relief clause No.4 is stayed with the condition that in one of the bed room of 2BHK flat the husband and his parents

or care taker have right to occupy their residence or keep the belonging. The kitchen of shared household will be remain common for wife and children on one hand and care taker, parents or husband on other hand, if the visit the India.

2. No order as to cost.”

4. Respondent No.1 filed application exhibit-15. By order dated 13.09.2017, the learned Additional Sessions Judge partly allowed that application in the following terms:

“ ORDER

1. The application Exh.15 is partly allowed.
2. The wife and children are allowed to stay in master bed-room.
3. On the other hand parents and caretaker are allowed to stay in double banker bed-room.
4. The application of parents in respect of installation of C.C.T.V. is rejected.
5. The parents are directed to make arrangement of new commode in double banker bed-room instead of spending on C.C.T.V. camera in shared household flat.
6. The sister of husband is restrained from entering into shared household flat except that she is allowed to take the parents in her house giving intimation to the wife.
7. The parents and caretaker are allowed to share common kitchen and hall.
8. The parties should use the common lock and keys should made available to wife and children on one hand and parents and caretaker on other hand.
9. In case of difficulty in executing the order, the help of Protection Officer is given to the wife and children to solve the problem.
10. No order as to cost.”

5. It is against these orders, parents of respondent No.3 have instituted the present proceedings.

6. In support of this Petition, Mr. Adenwala submitted that respondent No.1 has instituted proceedings under the Protection of

Women from Domestic Violence Act, 2005 (for short 'Act'). In these proceedings, petitioners herein are not made parties. He submitted that no allegations are made against the parents of the third respondent. Petitioners are basically aggrieved by directions contained in Clauses 4 and 5 of the order dated 13.09.2017. The learned Additional Sessions Judge rejected the application made by the petitioners for installation of C.C.T.V. and further directed to make alternate for new commode in double banker bed room instead of spending on C.C.T.V. camera in shared household flat. He submitted that the learned Additional Sessions Judge permitted respondent No.1 and children to occupy master bed-room. Instead of respondent No.1 occupying the master bed-room, petitioners may be permitted to occupy the master bed-room which has commode. It will not cause any prejudice to the respondent No.1. Petitioners and third respondent have no objection for respondent No.1 and children occupying double banker bed-room.

7. On the other hand, Ms Bajoria supported the impugned orders. She submitted that in the order dated 13.09.2017, the learned Additional Sessions Judge has held that after perusing the evidence, no material was found indicating that petitioners are residing in the shared household flat. Mr. Adenwala countered this by inviting my attention to paragraph 4 of the order dated 28.07.2017 wherein it was observed as under:

“4. ... On 19.09.2013 when the applicant went out for some personal work the respondent opened the door lock and he entered in the house along with his family members and the applicant was deserted from home.”

8. He submitted that the above observations clearly indicate that petitioners are residing in the shared household.
9. Be that as it may, presently, Court is concerned with the clauses 4

and 5 of the operative part of the order dated 13.09.2017. In my opinion, no case is made out for invocation of powers under Article 227 of the Constitution of India. As noted earlier, the learned Additional Sessions Judge has rejected the request made by the petitioners for installation of C.C.T.V. and directed that them to make arrangement of new commode in double banker bed-room. The learned Additional Sessions Judge also noted that the shared household flat admeasures 1200 sq.ft. Respondent No.1 is staying along with three children. Considering these aspects, no case is made out for interfering with the impugned orders. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

1/11/18