

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.450 OF 2018

Ganesh S/o Sarjerao Padale,
Age : 38 years, Occu: Service,
R/o: 92, 9/4, Near Parande,
Datte Mandir, Govindirao Patil Nagar,
Dhankawdi, Pune. 43
Dist. Pune.

... PETITIONER
(Orig. respondent)

VERSUS

1. Laxmi w/o Ganesh Padale,
Age : 34 years, Occu: Household,
2. Ritesh s/o Ganesh Padale,
Age : 14 years, Occu : Education,
Petitioner No.3 is minor,
under the Guardianship of Mother/Respondent No.1.
Both are R/o Ambedkar Nagar,
Zopadpatty, Mahul Road,
Aziz Bag Chembur,
Mumbai. 400074.

... Respondents
(Orig. Applicant 2 & 3)

...

Advocate for Petitioner : Mr. Madde Shrikant B.
Advocate for Respondent no. 1: Mr. A.P. Sonpethakar h/f. Mr. P. N.
Sonpethakar

...

CORAM : MANGESH S. PATIL, J.

DATE : 09.09.2019

JUDGMENT :

Heard both the sides.

2. Rule. The Rule is made returnable forthwith. In a

proceeding initiated by the respondent wife under Section 12 of the Protection of Woman from Domestic Violence Act, the petitioner husband submitted an application Exh.09 and raised the question of territorial jurisdiction on the ground that she has not been residing at Aurangabad and has been residing in Mumbai. The application was opposed on her behalf saying that she has been residing within the jurisdiction of the Magistrate though her parents reside in Mumbai. By the impugned order, the learned Judicial Magistrate relying upon her statement on oath/verification concluded that he had no reason to disbelieve her version that she was a resident of Aurangabad and rejected the application. Hence this Writ Petition.

3. After having heard both the sides at length, it appears that the issue regarding jurisdiction based on disputed facts has been decided by the learned Magistrate without seeking evidence from the parties. Apparently, there is a factual dispute as to whether the respondent wife has been residing at Aurangabad or in Mumbai. Being a pure question of fact, it was expected of the Magistrate to have waited for the parties to lead suitable evidence and it is only thereafter he could have pondered upon and decided the issue regarding jurisdiction. The learned Magistrate apparently seems to have been swayed away by her statement on affidavit simpliciter even when the matter was awaiting final hearing.

4. The question of jurisdiction unless it is based purely on admitted facts, cannot be decided at the initial stage of a proceeding. If the question of jurisdiction is dependent on facts which are disputed it is expected that the parties are given opportunity to lead evidence to substantiate their version regarding such facts. The procedure adopted by the learned Magistrate in going ahead and deciding the application even without requiring the parties to lead evidence has certainly caused prejudice to the parties. In the peculiar facts and circumstances of the case, therefore, in my considered view, it would be just and proper to quash and set aside the impugned order keeping the issue open to be decided at the final hearing by extending sufficient opportunity to both the sides to lead evidence.

5. Accordingly, the impugned order is quashed and set aside with a specific direction to the Magistrate to decide the question of jurisdiction along with the main proceeding, by extending opportunity to both the sides to lead evidence. The Writ Petition is accordingly disposed of.

6. The Rule is accordingly made absolute to above extent.

(MANGESH S. PATIL, J.)