

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

CRIMINAL REVISION APPLICATION NO. 387 OF 2018

Rajashree Dharmpal Jirge & Ors.	...	Applicants
V/s.		
Dharmpal Madhukar Jirge & Ors.	...	Respondents

Mr.Wasim Samlewale i/b. Mr.T.S. Ingale for Applicants.
Mr.Indrajeet Joshi for Respondent No.1 to 3.
Mr.R.M. Pethe, APP for Respondent No.4-State.

CORAM : A.S. GADKARI, J.

DATE : 25th September 2019.

P.C. :

1] By the present Revision under Section 397 of the Criminal Procedure Code, the applicants have impugned the Judgment and Order dated 11th May 2018 passed by the learned Additional Sessions Judge, Kolhapur, in Criminal Appeal No. 132 of 2017, dismissing the appeal and confirming the Judgment and Order dated 28th August 2017 passed by the learned 5th Judicial Magistrate First Class, Kolhapur, in Criminal Miscellaneous Application No. 837 of 2013 filed under Section 12 of The

Protection of Women From Domestic Violence Act (*for short, “the said Act”*).

2] Heard Mr.Samleware, learned counsel for the applicants, Mr.Joshi, learned counsel for the respondent Nos.1 to 3 and Mr.Pethe, learned APP for the respondent No.4. Perused the record.

3] The principal challenge to the Order passed by the Trial Court is that, while allowing application filed by the applicants under Section 12 of the said Act, the Trial Court has directed to pay maintenance amount to the applicants from the date of passing of the said Order and not from the date of filing of the said Miscellaneous Application. It is further contended that, though the Appellate Court in para No.10 in its impugned Judgment and Order has observed that the learned Magistrate failed to assign any reason as to why the Order of maintenance has given effect from the date of Order, the Appellate Court did not give effect for implementation of the said Order from the date of filing of the application.

4] Learned counsel for the applicants placed reliance on a decision of the Hon’ble Supreme Court in the case of *Jaiminiben Hirenghai Vyas & Another V/s. Hirenghai Rameshchandra Vyas & Another*, reported in 2015(2) SCC 385, wherein the Hon’ble Supreme Court has taken a view

that, the maintenance can be granted from the date of filing of the application. It is further observed that, it is open for the Magistrate to award maintenance from the date of application, provided express reasons are given for awarding such maintenance from the date of passing of the Order and not from the date of filing of the application.

5] A perusal of Order passed by the Trial Court would indicate that, the Trial Court has not given any reason for granting maintenance from the date of passing of the impugned Order and not from the date of filing of the said application. Perusal of record would further indicate that, the applicants have laid sufficient evidence to claim the maintenance from the date of filing of the application, which has not been taken into consideration by the Trial Court.

This Court is of the considered view that, the applicants are entitled to get maintenance at the rate specified by the Trial Court by its Judgment and Order dated 28th August 2017 from the date of filing of their application i.e. from 28th November 2013.

6] In view thereof, Clause No.2 of the Judgment and Order dated 28th August 2017 passed by the Trial Court is hereby modified and the respondent No.1 is directed to pay an amount of Rs.3,000/- per month

each to the applicant Nos.1 to 3 from the date of filing of their application i.e. from 28th November 2013. Rest of the Order passed by the Trial Court is not disturbed.

7] Revision Application is allowed in the aforesaid terms.

[A.S. GADKARI, J.]