

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

CRIMINAL REVISION APPLICATION No. 38 OF 2017

Shri.Amol Narendra Jaiswal

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

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Mr.Sushant C.Yeramwar i/b. Mr.Sagar A. Mane for the Applicant.

Mr.N.B.Patil, APP for Respondent No.1-State.

Mr.Manoj A. Patil, APP for Respondent No.2.

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CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 08 APRIL 2019

P.C.:

1. In this revision application, the order dated 29th March, 2014 passed by the learned Judicial Magistrate First Class, Court No.2, Kolhapur, directing the applicant-husband to pay Rs.7,000/- p.m. towards maintenance in D.V. proceedings; Rs.5,000/- p.m. towards medical expenses and Rs.2,00,000/- towards compensation to respondent No.2-wife, is challenged. The said order was challenged by the applicant-husband before the Sessions Court, Kolhapur by way of Criminal Appeal No. 64 of 2015. The learned Assistant Sessions Judge, Kolhapur

dismissed the said Appeal by judgment and order dated 29th November, 2016.

2. The main contention raised by the applicant-husband is that he was never served in D.V. proceedings i.e., Criminal Misc. Application No. 119 of 2013, which was filed under section 12 of Protection of Women from Domestic Violence Act, 2005.

3. However, the learned Counsel for respondent No.2-wife had filed counter claim that the notice was served on the applicant-husband and accordingly, the reports were filed by the Protection Officers.

4. I have perused the impugned judgments and orders. In paragraph No.3 of the impugned order, the learned Magistrate has mentioned that the reports below exhibits 13 and 14 were received disclosing the service of notice on the applicant-husband. The learned Sessions Judge in paragraph No.7 of the impugned judgment and order has mentioned that the record of the service of notice was kept in 'D' file and it came to be destroyed after a period of six months and thus, the record was destroyed. The learned Sessions Judge has no opportunity to verify the issue of service of notice on the applicant-husband.

5. Under such circumstances, it is doubtful whether the applicant-husband was served or not and, therefore, it is necessary to give a fair opportunity to the applicant-husband to lead evidence and put up his case before the learned Magistrate. Hence, I pass the following order :

ORDER

(i) Criminal Revision Application is allowed;

(ii) The applicant-husband is directed to deposit Rs.50,000/- towards part of the arrears of maintenance in the Court of the learned Judicial Magistrate First Class, Court No.2, Kolhapur on or before 15th April, 2019;

(iii) Hence, the order dated 29th March, 2014 passed by the learned Judicial Magistrate First Class, Court No.2, Kolhapur so also the order dated 29th November, 2016 passed by the learned Assistant Sessions Judge, Kolhapur are hereby quashed and set aside;

(iv) Application filed by respondent No.2-wife under section 12 of Protection of Women from Domestic Violence Act, 2005 is hereby restored;

(v) Parties to appear before the learned Magistrate on 15th April, 2019 and thereafter, the application filed by respondent No.2-wife under section 12 of Protection of Women from Domestic Violence Act, 2005 to be disposed of within a period of six months;

(vi) The claim regarding total payment of Rs.2,50,000/- towards maintenance made by the applicant-husband is to be verified by the learned Magistrate and accordingly, the amount can be adjusted;

(vii) Parties to co-operate the learned Magistrate.

6. Respondent No.2-wife is allowed to withdraw the amount deposited by the applicant-husband.

(MRIDULA BHATKAR, J.)