

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

CRIMINAL WRIT PETITION NO. 987 OF 2019

Surekha Nanaso Jagtap	]	
Age : 48 years, Occ : Household,	]	
R/o. Laxmi Building, Main Road,	]	
Opp. Old Hanmant Bazar, Vita,	]	
Tal. Khanpur, District : Sangli	]	...Petitioner

Versus

- | | | | |
|----|--------------------------------------|---|----------------|
| 1. | Dhanaji Jalindar Jagtap |] | |
| | Age : 44 years, Occ : Agriculturist, |] | |
| 2. | Vijayanti Jalinder Jagtap |] | |
| | Age : 62 years, Occ : Household, |] | |
| 3. | Parvati Ramchandra Babar |] | |
| | Age : 51 years, Occ : Household, |] | |
| 4. | Padmini Dhanaji Jagtap |] | |
| | Age : 41 years, Occ : Household, |] | |
| | All r/o. Laxmi Building, Main Road, |] | |
| | Opp. Old Hanmant Bazar, Vita, |] | |
| | Tal. Khanapur, District : Sangli |] | |
| 5. | Ajinkya Ramchandra Babar |] | |
| | Age : 29 years, Occ : Agriculturist, |] | |
| | R/o. Hingangade, Tal. Khanapur, |] | |
| | District : Sangli |] | |
| 6. | The State of Maharashtra |] | ...Respondents |

Mr. M.B. Deshmukh for the Petitioner
 Mr. A.R. Patil, APP for Respondent – State.
 Mr. Sandesh D. Patil i/by. Ms. Divya A. Pawar-Patil for Respondent nos. 1 to 5.

CORAM : S.S. SHINDE, J.
DATE : 27th SEPTEMBER 2019

JUDGMENT :

1. Rule. Rule made returnable forthwith, with consent of parties Petition is heard and disposed of finally at the stage of admission.
2. Heard counsel appearing for the Petitioner and learned counsel appearing for the contesting Respondents.
3. Learned counsel appearing for the Petitioner invites attention of this Court to the observations made by the Trial Court in the impugned order, and in particular paragraph nos. 11, 12 and 13 and submits that, the learned Sessions Judge, Sangli considered the appeal proceedings as per the provisions of Section 125 of the Code of Criminal Procedure, though the proceedings before the Trial Court are initiated by the Petitioner under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for sake of brevity hereinafter will be referred as "Said Act") against the first Respondent. An appeal filed by the first Respondent before the Sessions Court was also under Section 29 of the said Act. The appellate Court has caused the interference in the order passed by the learned JMFC, at Vita in Criminal Misc. Application No. 173 of 2017 and set aside the order passed by the learned JMFC directing the contesting Respondents to pay Rs. 5,000/- (five thousand only) as an interim maintenance, till the disposal of the aforesaid application. Learned counsel submits that the remedy provided to the aggrieved person under the said Act is an independent remedy, and

therefore the appellate Court should not have considered proceedings of appeal as per the provisions of Section 125 of Cr.P.C.

4. On the other hand learned counsel appearing for the contesting Respondent submits that, there is a proper application of mind by the learned Sessions Judge, and realizing the fact that the aggrieved person is a sister in law of the first Respondent the Sessions Court has passed the appropriate order thereby holding that, respondents are not under obligation to pay maintenance to the Petitioner. It is submitted that, the order passed by the learned JMFC, Vita was without considering the factual score that the property held by the husband of the original applicant so also other material while arriving at conclusion to direct respondents to pay interim maintenance and therefore, the Sessions Court has rightly interfered in the order passed by the learned JMFC at Vita, since it was without assigning cogent reasons while directing the contesting Respondent to pay Rs. 5,000/- as interim maintenance to the petitioner. It is submitted that, since the Appellate Court has remitted the matter back to the Court of learned JMFC at Vita for *de novo* consideration, no prejudice will be caused to the present petitioner and ultimately if the petitioner has a good case on merits, she may succeed in the pending application before the Magistrate.

5. Heard the counsel appearing for the parties at length. With their able assistance perused the pleadings in the petition, grounds taken

therein and annexure thereto and the reasons assigned by the Sessions Court at Sangli. It appears from perusal of the paragraph nos. 11 and 12 of the judgment that the learned Judge has considered the prayer of the petitioner for maintenance keeping in view the provisions of Section 125 of the Cr.P.C. and reached to the conclusion to set aside the order passed by the learned JMFC at Vita, whereby it was directed to the contesting Respondents to pay interim maintenance of Rs. 5,000/- per month to the Petitioner. In respect of discussion made by the learned Sessions Court and the conclusion arrived at, placing reliance upon the provision of Section 125 of the Cr.P.C, it needs to be stated that the proceedings under the said Act and Section 125 of the Cr.P.C are totally independent. An aggrieved person i.e., wife, has been provided independent remedy under the said act. The Sessions Court should have kept in view the fact that petitioner is widow and by way of interim maintenance, contesting Respondents are directed to pay Rs. 5,000/- as an interim maintenance. Prima facie the said directions issued by the learned JMFC at Vita cannot be treated as unreasonable. In that view of the matter, and since this Court is inclined to give further directions to the learned JMFC at Vita to dispose of Criminal Misc. Application No. 173 of 2017 finally within a period of three months from today, the ends of justice would be met if the following order is passed.

ORDER

- A) The impugned order dated 04.01.2019 to the extent of quashing and setting aside the order passed by the learned JMFC at Vita, thereby directing the contesting Respondents to pay Rs. 5,000/- towards interim maintenance during pendency of the Criminal Miscellaneous Application, is quashed and set aside. The order passed by the JMFC, Vita directing the contesting Respondents no. 1 to 5 individually and collectively, to pay an interim maintenance of Rs. 5,000/- per month from the date of filing the application till disposal of the same stands restored.
- B) Contesting Respondents no. 1 to 5 shall continue to pay an interim maintenance as directed by the JMFC, Vita from the date of filing the application before the JMFC, Vita subject to outcome of main application.
- C) The learned JMFC at Vita is directed to complete the hearing of the Criminal Miscellaneous Application No. 173 of 2017 and take the final decision as expeditiously as possible however, preferably within 3 months from today.
6. Rule is made absolute on above terms. The Writ Petition is allowed to the aforesaid extent and same stands disposed of accordingly. No order as to costs.

(S.S. SHINDE, J.)