

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

WRIT PETITION No. 2132 OF 2018

Mr.Zafar Ali S/o. Late Asar Ali and Anr. ...Petitioners

Versus

Mrs.Gulsanobar Bano Zafar Ali & Anr. ...Respondents

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Ms.Nirmala Gopal a/w. Patankar & Associates for the Petitioners.

Mr. Irfan Shaikh for Respondent No.1.

Mr.A.R.Patil, APP for Respondent No.2-State.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED : 16 JANUARY 2019**

P.C.:

1. Leave to amend the age of respondent No.1-wife.
2. Rule. Rule made returnable forthwith. By consent of the parties, the Petition is heard finally and disposed of at the stage of admission.
3. In this Petition, the order dated 28th February, 2017 passed by the learned Metropolitan Magistrate, 46th Court, Mazgaon at Sewreee, Mumbai in C.C.No. 4600160/M/2014 and also the order dated 4th April, 2018 passed by the learned Addl. Sessions Judge,

City Civil & Sessions Court, Gr. Mumbai in Criminal Appeal No. 303 of 2017 are challenged. The learned Addl. Sessions Judge has confirmed the order passed by the learned Magistrate in respect of granting maintenance in D.V. proceeding to respondent No.1- wife.

4. The learned counsel for the petitioners has submitted that petitioner No.1-husband and respondent No.1-wife, who are Muslims by religion, have separated in the year 2000. She has further submitted that petitioner No.1-husband gave Talaq to respondent No.1-wife on 3rd October, 2000. Thus, petitioner No.1-husband and respondent No.1- wife are not having domestic relationship for 14 years. She has further submitted that in the year 2014, respondent No.1-wife filed an application under section 12 of the Protection of Women from Domestic Violence Act, 2005. She has further submitted that neither the learned Magistrate nor the learned Addl. Sessions Judge have considered this aspect in correct prospective. She has further submitted that while entertaining the Application under D.V. Act, the learned Magistrate granted maintenance in favour of respondent No.1-wife. She has further submitted that respondent No.1- wife did not move any

application for maintenance during the period of 14 years, but she wants to claim her share in the sale proceedings of the shop, which was sold by the mother of petitioner No.1- husband. She has further submitted that respondent No.1- wife has filed a civil suit seeking her share in the said sale proceedings, however, her interim application is rejected. Till today, no relief is granted to respondent No.1-wife in the civil proceedings. She has further submitted that this fact ought to have been taken into account by the learned Magistrate so also by the learned Addl. Sessions Judge and the application for maintenance filed by respondent No.1- wife should have been dismissed.

5. The learned counsel for respondent No.1-wife has submitted that respondent No.1- wife has challenged the Talaqnama. He has further submitted that petitioner No.1-husband has not produced original documents before the learned Magistrate and the learned Addl. Sessions Judge. He has further submitted that respondent No.1 -wife moved an application under section 91 of the Code of Criminal Procedure for production of those original documents before the learned Magistrate. However, petitioner No.1-husband did not file the original documents though asked for. He has

supported the orders passed by the learned Magistrate and the learned Addl. Sessions Judge while pointing out the very Talaqnama is disputed and no Talaqnama is given by petitioner No.1-husband to respondent No.1-wife, and the domestic relationship is proved.

6. Perused the impugned orders. Both the Courts have dealt with the objections raised by petitioner No.1-husband in respect of existence of the domestic relationship between petitioner No.1-husband and respondent No.1 -wife. It is to be mentioned that the Talaqnama is disputed by respondent No.1-wife throughout the proceedings. It appears from the orders passed by both the Courts that the original Talaqnama is not produced before both the Courts. Under such appreciation of the facts by the learned Magistrate so also by the learned Addl. Sessions Judge in respect of existence of the domestic relationship between the parties cannot be faulted with. This Court cannot go into the disputed facts. No illegalities are found in the orders passed by the learned Magistrate and the learned Addl. Sessions Judge. Hence, the Writ Petition is dismissed. Rule is discharged.

(MRIDULA BHATKAR, J.)