

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

CRIMINAL WRIT PETITION NO.4732 OF 2018

Deepak Kantilal Desai & Ors.

... Petitioners

Vs

Shruti Mihir Shah & Ors.

... Respondents

Mr.Subodh Desai i/b A.S. Sawant for the Petitioners
Mr.Satyavrat Joshi for Resp. No.1
Ms.Prabha Badadare for Resp. Nos.2 & 3
Ms.Veera Shinde, APP, for the Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: MARCH 18, 2019

P.C.:

1. Pursuant to the order passed by this Court on 1.11.2018 and also on 12.2.2019, the matter is fixed today for hearing, where the order dated 13.6.2018 passed by the learned Chief Judicial Magistrate, Pune against the applicants/accused in the proceedings under Protection of Women from Domestic Violence Act, is challenged.

2. The learned Counsel for the respondents in the beginning took objection to the maintainability of this Writ Petition as an alternate remedy is available under section 29 of the Protection of

Women from Domestic Violence Act. The learned Counsel for the petitioners has submitted that the petitioners have approached this Court under writ jurisdiction because there is an abuse of process of law.

3. The objection raised by the learned Counsel for the respondents about the maintainability of the Writ Petition is valid in view of section 29 of the Protection of Women from Domestic Violence Act which provides appeal against orders passed under the said Act. So, the appeal lies before the Sessions Court.

4. These proceedings under the said Act are filed by the daughter against her father, mother, brother and uncles. She claims the property to be an ancestral property and hence, claims right in the said property and also claims protection under the Protection of Women from Domestic Violence Act, as the house which she is occupying is a shared household. In the order dated 1.11.2018, this Court allowed petitioner No.1 Deepak Kantilal Desai, the father, to operate HDFC Savings Bank account No.50100226795121 and allowed to withdraw 50% of the amount.

5. The learned Counsel for the respondent No.1, on instructions from the respondent No.1/the original complainant, who is present in the Court, submits that the same restrictions are to be continued as it is mentioned in clause 2 of the operative portion of the order passed by the learned Chief Judicial Magistrate, Pune.

6. Considering the submissions and the facts of the case and the order passed therein, I relax the said condition of restricting the petitioner No.1 to withdraw only 50% of the amount from the said account but he is allowed to operate the said HDFC Savings Bank Account No.50100226795121. Accordingly, I pass the following order:

- i) The petitioner may file appeal before the Sessions Court challenging the impugned order;
- ii) The delay in filing the appeal is condoned.
- iii) If the appeal is filed and if any interim application is moved in the said appeal, the learned Sessions Judge to decide the same within 45 days thereafter.

iv) The rights and contentions of the parties are kept open.

7. Writ Petition is disposed of accordingly.

(MRIDULA BHATKAR, J.)