

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.5832 OF 2018

Vinodkumar Rammurat Yadav ... **Petitioner**
Versus
The State of Maharashtra & Anr. ... **Respondents**

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Adv.Pooja Joshi i/b. Mr.Ashok M. Saraogi, Advocate for the
Petitioner.

Mr.A.R.Patil, the Additional Public Prosecutor for the Respondent
No.1/State.

None for the Respondent No.2.

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CORAM : A.M.BADAR J.

DATED : 20th DECEMBER 2019.

P.C. :

1 By this petition, the petitioner/original respondent in a
proceedings under Section 12 of the Protection of Women from
Domestic Violence Act, 2005 (hererinafter referred to as 'D.V.Act'
for the sake of brevity) initiated by respondent No.2 is challenging
the Appellate Order passed by the learned Additional Sessions
Judge, thereby restoring the proceedings on record of the learned
trial Magistrate by setting aside the Order of dismissal thereof in
default.

2 Heard the learned Counsel appearing for the petitioner/original respondent. She contended that several ancestral properties of the family were disposed of by the alleged aggrieved person and, therefore, the petitioner had instituted various suits. As a counterblast, the aggrieved person, who happens to be mother of the petitioner filed the proceedings under Section 12 of the D.V.Act. The learned Counsel further argued that in fact, there is no cause for domestic violence case. The aggrieved person always used to reside at some other State. She was not residing with the petitioner at Mumbai at any point of time. But to harass the petitioner, she is taking shelter of the provisions of D.V.Act. The learned Counsel further argued that after rejection of claim of interim relief, the aggrieved person never attended the Court and she wants to change the Advocate. The learned trial Court has rightly dismissed the proceedings under Section 12 of the D.V.Act. Therefore, in submission of the learned Counsel for the petitioner, impugned Order deserves to be quashed and set aside.

3 I have considered the submissions so advanced and also perused the material placed on record.

4 It appears that claim for interim maintenance made by the respondent/aggrieved person came to be rejected by the learned trial Magistrate. The case was then fixed for evidence of parties. It appears that thereafter, the aggrieved person had changed her Advocate and sought adjournment in the matter. Even on the date of dismissal of her case for default, she preferred an application (Exhibit 22) for adjournment. However, that application came to be rejected by the learned trial Magistrate and that is how the application under Section 12 of the D.V.Act consequently came to be dismissed for want of prosecution. The said Order is set aside by the Appellate Court in exercise of powers under Section 29 of the D.V.Act in an appeal filed by the aggrieved person. The Appellate Court has observed that on 11/01/2017, the aggrieved person intended to file *vakalatnama* and accordingly, she has placed on record *vakalatnama* of Advocate Ajay Jaiswal. The learned trial Court further observed that therefore, the learned trial Magistrate ought to have granted adjournment in order to give opportunity to the newly appointed Advocate engaged by the aggrieved person to conduct the case after verifying the records of the case.

5 The Appellate Order is a discretionary Order and the learned Appellate Court has exercised discretion to restore the proceedings under the D.V.Act, which was dismissed in default despite filing of the application for adjournment by the aggrieved

person. The discretion exercised by the Appellate Court in restoring the proceedings as such, cannot be faulted with. The same is not arbitrary or capricious. The Petition is, therefore, dismissed.

(A.M.BADAR, J.)