

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

CRIMINAL WRIT PETITION NO. 5261 OF 2019

Shivningappa Ningappa Kulkarni & ors. ..Petitioners.

v/s.

**Jayashree Shivningappa Kulkarni @
Jayashree Mundodgi.** ..Respondents.

Mr. I.M. Khairdi, advocate for petitioners.

Mr. Anvil S. Kalekar, advocate for respondent No. 1.

Ms. Pallavi Dabholkar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : MARCH 13, 2020.

P. C. :

1 Heard the learned Counsel for the petitioners and the learned APP for State.

2 The petitioner herein impugns the order dated 20/9/2019 passed by Additional Sessions Judge, Solapur, thereby confirming the order dated 19/11/2018 passed by the learned Judicial Magistrate First Class, Court No. 9, Solapur in Criminal Misc. Application No.249 of 2016. The petitioner herein is the respondent No.1 in Misc. Application No. 249 of 2016 filed by the respondent No. 1 in this petition under section 12 of the Protection of Women from Domestic Violence Act.

Talwalkar

3 It is submitted that initially, an application was made seeking maintenance during course of the proceeding. However, the said application was not pressed. Thereafter, the respondent herein, in the course of recording of evidence had filed application seeking maintenance. The learned Magistrate had granted maintenance of Rs. 5,000/- to the respondent No. 1 to be paid from the date of the application.

4 Being aggrieved by the said order, the petitioner herein had approached the Sessions Court. It appears that the main contention of the Petitioner is that claim made is not by legally wedded wife of the petitioner. However, that is not a condition precedent for filing proceeding under the protection of Women from Domestic Violence Act. Secondly, it is the contention of the learned Counsel that at the fag end of the proceedings, such an application seeking maintenance ought not to have been entertained, especially when it was not pressed on the earlier occasion.

5 Learned Counsel for the respondent No. 1 submits that at the stage when the respondent No. 1 really needed funds to maintain herself, she has taken recourse to filing of the said application and no fault can be found with the same. The

Talwalkar

learned Appellate Court has considered rival contentions of the parties and has rightly held that maintenance is a continuing right and person entitled to maintenance, can approach the court at any time irrespective of any limitation. It is also observed that it is her right to maintenance. Right to maintenance is recurring cause of action, as earlier application is not decided on merits.

6 The findings recorded by the Appellate Court call for no interference. However, it is made clear that at the time of delivering final Judgment, the learned Magistrate shall not be influenced by any of the observations made either by the Magistrate or the Appellate Court at the time of considering the application for maintenance.

7 The petition being sans merits stands rejected. Learned Magistrate shall decide the application under Protection of Women under Domestic Violence Act expeditiously as the evidence is already recorded.

8 The Writ Petition is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]