

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.89 OF 2017

SUVARNA SARJERAO POTDAR)...PETITIONER

V/s.

PRAKASH SHANKAR POTDAR AND ORS.)...RESPONDENTS

Mr.Girish Potdar appearing in person.

Mr.A.R.Kapadnis, APP for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 13th JANUARY 2020

P.C. :

1 Heard Mr.Girish Potdar - son of the petitioner. He argued that the petitioner ought to have been granted interim relief as prayed before the learned Judicial Magistrate First Class, Pethvadgaon, in view of provisions of Section 2(q) of Protection of Women from Domestic Violence Act, 2005 and particularly the proviso thereto. He further submitted that the petitioner is an “aggrieved person” falling in the definition of the said term as defined by Section 2(a) of the Protection of Women from

Domestic Violence Act, 2005, and therefore, the learned trial Magistrate was incorrect in rejecting the application for interim relief, and consequently, same error is committed by the learned Appellate Court.

2 I have considered the submissions so advanced and also perused the written notes of arguments as well as the impugned order passed by the Appellate Court.

3 In the matter of **Hiral P. Harsora and Others vs. Kusum Narottamdas Harsora and Others**¹ proviso to section 2(q) of the Protection of Women from Domestic Violence Act, 2005, stands quashed and set aside. Similarly, the learned Appellate Court after scrutiny of the matter has held thus in paragraph 7 of the impugned judgment :

7On the contrary, the pleadings clearly demonstrate that there was separate residence of the applicant and the respondents from the very inception. Deceased husband of the applicant and his brother constructed their separate rooms and

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they were having their separate possession. Such separate possession continued even after his death. Thus, to attract any of the provisions of the Protection of Women from Domestic Violence Act, there must be a “shared household” and the applicant must be residing in “domestic relationship” in such shared household as defined under the Act. These two essential requirements are absent in the application.”

4 In this petition, what is challenged is confirmation of rejection of an application for interim relief in an appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005, by the learned Additional Sessions Judge, Kolhapur. The impugned order cannot be said to be perverse and illegal. The finding of facts recorded at the interim stage of the appeal cannot be interfered with in writ jurisdiction of this court.

5 The petition is devoid of merits and therefore the same is dismissed.

(A. M. BADAR, J.)