

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3985 OF 2019

RIYAZ ISAQUE SHAIKH AND OTHERS PETITIONERS.

VERSUS

**SMT.TASLIMUNNISA RIYAS SHEIKH
AND ANOTHER RESPONDENTS.**

Mr.Rahul B. Vijaymane, Advocate for the petitioner.

Mr.A.R.Kapadnis, APP for State.

CORAM : A. M. BADAR, J.

DATE : 27TH FEBRUARY 2020.

P.C.:

1. This is a petition by the respondents in an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (to be referred to as the Domestic Violence Act for the sake of brevity).

2. By this petition, the petitioners/original respondents

are challenging the order passed by the learned Additional Sessions Judge, Solapur on 10.7.2019 in an appeal under Section 29 of the Domestic Violence Act bearing No.23 of 2019, which was filed by them for challenging the final judgment and order passed by the learned Judicial Magistrate First Class on 02.04.2018 in criminal Miscellaneous Application no.561 of 2015 thereby partly allowing the said application under Section 12 of the Domestic Violence Act filed by the respondent no.1 herein/aggrieved person.

3. Heard the learned counsel appearing for the petitioners/original respondents. He drew my attention to the interim order passed in an application under Section 12 of the Domestic Violence Act on 20.8.2015. My attention is also drawn on the evidence adduced by the aggrieved person before the learned trial Magistrate. By pointing out the judgment and order dated 2.4.2018, passed in an application bearing No.561/2015, it is argued that by the learned

counsel for the petitioner/original respondents that an opportunity of hearing and adducing the evidence was not granted by the learned trial Magistrate. My attention is further drawn to the appellate Judgment and it is argued that condition of deposit of 50% of amount of the arrears on or before 13.8.2019 is ex-facie illegal and as the petitioner/original respondents could not comply this order, the original proceedings could not be revived for availing an opportunity of hearing.

4. I have considered the submissions so advanced and perused the material placed before me.

5. Respondent no.1 herein had preferred an application under Section 12 of the Domestic Violence Act alongwith interim application under Section 23 of the Domestic Violence Act. The petitioners were respondents in that application.

6. Application under Section 23 of the Domestic Violence Act came to be allowed partly on 20.8.2015 by directing the original respondents/petitioners herein to pay the amount of Rs.2000/- per month as interim maintenance and that of Rs.1,000/- per month towards rent.

7. After disposal of interim application, parties went for trial. In support of her claim, respondent no.1 herein/aggrieved person has adduced the evidence and she was cross examined by the petitioners herein/original respondents. The record, however, shows that after closure of evidence of the aggrieved person, the petitioners herein/original respondents have chosen not to adduce any evidence by remaining absent. The application was fixed for recording of evidence of the petitioners herein/original respondents on 22.12.2017 and thereafter it was adjourned to 2.2.2018, 12.2.2018, 20.2.2018 and 1.03.2018. The petitioners herein/original respondents have chosen to remain

absent on all these dates and therefore, their evidence was closed by the learned trial Magistrate. Thereafter arguments of the applicant were heard and ultimately, application was fixed for passing judgment on 2.4.2018. Application under Section 12 of the Domestic Violence Act was accordingly, allowed partly by directing the petitioners herein/original respondents to pay the maintenance of Rs.2,000/- per month apart from the rent of Rs.1,000/- per month and amount of Rs.25,000/- was awarded as compensation. Cost of Rs.1,000/- was also imposed on the original respondents vide Judgment and Order dated 2.4.2018 by the learned trial Magistrate.

8. Dis-satisfied with the judgment and order of the learned trial Magistrate, the petitioners herein/original respondents preferred an appeal under Section 29 of the Domestic Violence Act. After hearing the parties, by impugned Judgment and Order dated 10.7.2019, the learned Additional Sessions Judge, Solapur was pleased to remand

back the application under Section 12 of the Domestic Violence Act by virtually allowing the appeal filed by the petitioners herein/original respondents. However, they were directed to pay 50% arrears amount as per order of the learned trial Magistrate on or before 13.8.2019. It is reported that this order is not complied by the petitioners/original respondents.

9. In fact, no case for indulgence was made out before the learned appellate court. Absence of the petitioners herein/original respondents before the learned trial Magistrate was not justified by any reason. However, still the learned appellate court was pleased to remit the matter back to the learned trial Magistrate for according an opportunity of hearing to the petitioners herein/original respondents which they have failed to avail by not even depositing 50% of the amount of arrears arising out of the order passed by the learned trial Magistrate.

10. In this view of the matter, there is no reason to interfere with the appellate judgment and order which is sought to be impugned by the petitioners herein/original respondents. The petition, therefore, fails and same is dismissed accordingly.

(A. M. BADAR, J.)