

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.769 OF 2022

1) Shri. Vitthal Gangadhar Ulekar,
Age-52 years, Occu:Nil,

2) Vijaya Vitthal Ulekar,
Age-45 years, Occu:Nil,

Both R/o-Kolpewadi, Tq-Kopargaon,
Dist-Ahmednagar

...PETITIONERS

VERSUS

Jayashri Vitthal Ulekar,
Age-32 years, Occu:Agriculture,
R/o-Paregaon Bk., Tq-Sangamner,
Dist-Ahmednagar.

...RESPONDENT

...
Mr.Sopan G. Bobade Advocate for Petitioners.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 22nd JUNE, 2022

ORDER :

1. By this Petition, the petitioners intend to invoke the constitutional powers of this Court under Article 227 of the Constitution of India to challenge order dated 22nd April 2022 passed by the learned Additional Sessions Judge, Sangamner,

District-Ahmednagar in Criminal Appeal No.6 of 2021 thereby dismissing the appeal filed by the petitioners, in which they had challenged the order dated 20th March 2021 passed by the learned Judicial Magistrate First Class, Sangamner below Exhibit-5 in Criminal Misc. Application No.77 of 2019.

2. Heard Mr. Bobade, the learned Advocate for the petitioners. It is not even necessary to issue notice to respondent.

3. Present respondent – original applicant has filed Criminal Misc. Application No.77 of 2019 under Section 12 of Protection of Women From Domestic Violence Act (for short “the D.V. Act”) for getting various reliefs under the said Act. According to the present respondent, her marriage was performed with present petitioner No.1 on 28th February 2017 at Paregaon Bk., Taluka-Sangamner, District-Ahmednagar and their relationship as husband and wife still exists. She has disclosed that prior to 28th February 2017 her marriage was performed with another person and she has a daughter from the earlier husband. Her earlier husband expired in an accident and therefore, being a widow, her relatives had planned for her second marriage. Present petitioner No.1 then disclosed that he is a divorcee and

therefore, the marriage was performed. According to original applicant – present respondent, after marriage she was cohabiting with petitioner No.1 at Nategaon and then she was taken to village Kolpewadi, Taluka-Sangamner, where petitioner No.1 was serving. She was treated properly for about 2 to 3 months and thereafter petitioner No.1 started harassing her physically and mentally. Thereafter she could see that petitioner No.2 used to come to their house and used to behave like wife with petitioner No.1 and therefore, she asked as to who was the lady and then it was disclosed that petitioner No.2 is the first wife of petitioner No.1 and since they do not have issue, petitioner No.1 has performed marriage with the original applicant – present respondent. When original applicant asked as to why she has been cheated, she was assaulted by petitioner No.1. She says that petitioner No.1 forcibly kept sexual relations with her. She says that she was driven out of the house on 15th October 2018. After exchange of notices, the original applicant has filed the said application and also filed application Exhibit-5 for interim maintenance.

4. It appears that notice has been issued to the present petitioners - original respondents by the learned Magistrate and after receiving the say, application Exhibit-5 was allowed by the

learned Magistrate by granting maintenance at the rate of Rs.5,000/- per month from present petitioner No.1 to the present respondent – original applicant.

5. The present petitioners had challenged the said order in Criminal Appeal No.6 of 2021 before the learned Additional Sessions Judge, Sangamner and after hearing both the sides, the said appeal came to be dismissed.

6. Learned Advocate for the petitioners submits that there was no domestic relationship between the respondent and petitioner No.1. Marriage between petitioner No.1 and petitioner No.2 was legal and in existence when alleged marriage between petitioner No.1 and respondent had taken place. It cannot be said that there was any kind of domestic relationship between petitioner No.1 and the respondent nor there was any evidence to show that they were staying in the shared house. The learned Magistrate had erred in either issuing notices to the petitioners or granting maintenance to the respondent.

7. The first and foremost fact is that this Court in its writ jurisdiction cannot enter into the disputed facts and further it is to be noted that in appeal under Section 29 of the D.V. Act, the

learned Additional Sessions Judge had considered the documents on record. It was specifically pointed out that the present respondent had approached *Dilasa* Cell of Police and the statement of present petitioner No.1 was recorded there. In that statement, he has admitted that there was marriage between him and the present respondent. Therefore, *prima facie* evidence appears to have been considered. Further, some photographs were also produced to substantiate the fact that there was marriage. When the matter is at the initial stage and the *prima facie* evidence has been seen and based upon that interim maintenance has been granted, then this is not a fit case where constitutional powers of this Court should be exercised. The petitioners are at liberty to contest the main application and produce evidence of their choice. The Writ Petition, therefore, deserves to be rejected.

8. Accordingly, the Writ Petition stands rejected.

[SMT. VIBHA KANKANWADI , J.]