

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.854 OF 2022

Surekha Amarjit Hambire & Anr. ...Petitioners
V/s.
Murlidhar Ambaji Hambire & Ors. ...Respondents

Mr. Ajit M. Savgave for Petitioners.

Ms. Komal M. Mestry i/by PNP & Associates for Respondent Nos.1 and 2.

Mr. S. S. Pednekar, APP for the Respondent (State).

CORAM : AMIT BORKAR, J.

DATE : OCTOBER 18, 2022

PC.:

1. This is Petition by wife and daughter in a proceedings arising out of the Provisions of Protection of Women from Domestic Violence Act, 2005.

2. Learned Magistrate by order dated 23rd April 2015 directed the husband, father-in-law and mother-in-law to provide residence to the petitioners in two rooms alongwith all amenities. The learned Magistrate also directed them to pay compensation of Rs.2,00,000/-. Father-in-law and mother-in-law challenged the order by way of Criminal Appeal No.07 of 2016. Learned Additional Sessions Judge, Solapur allowed the Appeal, holding that the petitioners never resided with father-in-law and mother-in-law, and therefore, domestic relationship between the

petitioners, father-in-law and mother-in-law was not to disturb.

3. Learned advocate appointed to represent petitioners invited my attention to the Judgment of Single Judge of this Court in the case of **Aditya Anand Verma Vs. State of Maharashtra**, reported in 2022 (3) DCR Criminal 48.

4. This Court in the said Judgment held that the wife would be entitled to relief of right of residence in the share household even if she had not actually resided with the petitioners therein. This Court held that actual residence in share household is not necessary for claiming right of residence in the shared household.

5. The Judgment of learned Additional Sessions Judge is based on wrong premise in law that the wife who had not actually resided in shared household is not entitled to right of residence.

6. In that view of the matter, it is necessary in the interest of justice that the Appellate Court should reconsider the Appeal of respondent nos.1 and 2 on merits. Hence, the following order is passed:-

- (i). The impugned Judgment and order passed by Additional Sessions Judge, Solapur dated 20th April 2017 in Criminal Appeal No.07 of 2016 is quashed and set aside.
- (ii). The learned Additional Sessions Judge, Solapur shall decide Criminal Appeal No.7 of 2016 on merits afresh.

- (iii). The parties are at liberty to urge all contentions as are permissible in law.
- (iv). Since this Court by order dated 19th September 2022 had restrained the respondents from creating third party interest in the subject property, the said relief shall continue for a period of one (1) week. It will be open for petitioners to file appropriate Application before the learned Magistrate seeking same relief.
- (v). Writ Petition stands disposed of in the above terms.

(AMIT BORKAR, J.)