

CRIMINAL REVISION APPLICATION NO.59 OF 2022

V/s.

Parshuram Sadashiv Vharkal & Anr. ...Respondents

Ms. G.P. Mulekar, APP for the State.

CORAM : AMIT BORKAR, J.

DATE : OCTOBER 4, 2022

P.C.:

1. The challenge in this revision application is to the order passed by the appellate Court rejecting application seeking maintenance under the provisions of the Protection of Woman from Domestic Violence Act, 2005 (“the DV Act”, for short). The learned Magistrate by judgment and order dated 7th September 2015 granted maintenance of Rs.4,000/- per month to the applicant recording a finding of domestic violence. Aggrieved thereby, the husband filed Criminal Appeal No. 222 of 2015 before the Sessions Court. By the impugned judgment, learned Sessions Court allowed the appeal rejecting application for maintenance.

2. Perusal of the judgment shows that the revisional Court has applied strict rules of pleadings to the proceedings under the DV

Act. It is well settled that the purpose of pleading is to give fair idea to the opponent the nature of case he is required to meet. The Court, while considering application for maintenance under the provisions under the provisions of the DV Act, cannot adopt hyper-technical view in relation to pleadings. It is expected of a Court, while considering the proceedings under the provisions of the DV Act, to take a holistic approach while considering the pleadings and evidence. In paragraphs 6, 7 and 8 of the judgment, it appears that the appellate Court disbelieved the evidence of the complainant and her brother and recorded a finding that she has failed to prove domestic violence by considering subsequent conduct of the petitioner. It needs to be noted that section 8 of the Evidence Act strictly does not apply to the maintenance proceedings under the DV Act. Oral evidence of the complainant has to be scrutinized on the basis of natural human conduct by taking into consideration the purpose and object of the DV Act.

3. The judgment of the appellate Court proceeds on the inferences drawn without evidence on record. It appears that the appellate Court has taken judicial notice of certain facts which he was not entitled to in law.

4. In that view of the matter, it is necessary in the interest of justice that the appellate Court should reconsider the appeal of the husband afresh on the basis of material placed on record before the Magistrate. I, therefore, pass the following order :-

- (i) The impugned order dated 15th November 2021 passed by the Additional Sessions Judge, Sangli in Criminal Appeal

No. 222 of 2015 is quashed and set aside;

ii) Criminal Appeal No.222 of 2015 is restored to the file of the learned Sessions Judge, Sangli;

iii) The learned Sessions Judge, Sangli shall decide Criminal Appeal No. 222 of 2015 after giving opportunity of hearing to the parties. The parties shall appear before the learned Sessions Judge on 17th October 2022.

iv) In the facts and circumstances of the case, and particularly considering the fact that the appeal was filed in the year 2015, the learned Sessions Judge is requested to dispose of the appeal within six (6) months from the date of appearance of the parties.

5. The revision application stands disposed of accordingly. No costs.

6. It is made clear that the observations made in this order are only for the purpose of decision of present revision application and the learned Sessions Judge shall decide the appeal on its own merits uninfluenced by the observations made in this order.

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(AMIT BORKAR, J.)