

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2528 OF 2021

1. Suchitra Dattatray Mane
2. Madhuri Dattatray Mane ...Petitioners

Versus

1. Dattatray Vishwanath Mane & Ors. ...Respondents

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Mr. Balwant V. Salunkhe, Advocate for the Petitioners.

Mr. Rushikesh Kale i/by Mr. V. V. Purwant, Advocate for Respondent No. 1.

Mr. A. D. Kamkhedkar, APP for the Respondent No.5 – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 18th JULY, 2022.

PER COURT:

1. The Petitioners are aggrieved by order dated 30.03.2021 passed by the Sessions Court, Pune in Criminal Appeal No.197 of 2020 setting aside the order dated 17.01.2020 passed by the Court of learned J.M.F.C., Pune below Exhibit – 5 in Criminal Misc. Application No.2219 of 2018.

2. The Petitioners are original complainants in Criminal Case No.2219 of 2018 filed before the Court of learned J.M.F.C. Pune under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as ‘D.V. Act’). The said complaint was filed against Respondent Nos.1 to 4 seeking reliefs under Sections 18, 19, 20, 21 & 22 of the D.V. Act.

3. The Petitioners filed application below Exhibit – 5 for interim maintenance claiming amount of Rs.50,000/- to Petitioners each for their livelihood and Rs.50,000/- towards residence. The interim application was partly allowed vide order dated 17.01.2020 and the Respondent No.1 was directed to pay interim maintenance of Rs.7000/- per month till final decision of the main application to Petitioner No.1 from the date of application. It was also directed that the Respondent Nos.1 and 2 shall not sell the properties in their names to some other persons or not to create any third party interest.

4. The order dated 17.01.2020 was challenged by Respondent No.1 by preferring Criminal Appeal No.197 of 2020 before the Court of Sessions at Pune. The learned Sessions Judge vide order dated 30.03.2021, set aside the impugned order dated 17.03.2020 passed by learned J.M.F.C. below Exhibit – 5 and rejected the said application.

5. Learned Advocate for the Petitioner submitted that the learned Sessions Judge has committed an error in setting aside the order of learned Magistrate. The impugned order is contrary to law. The learned Sessions Judge ought to have considered that the application under D.V. Act is filed in addition to application under Section 125 of Cr.P.C. There is no bar for filing two applications.

The application before the learned J.M.F.C. at Solapur was withdrawn on 08.12.2018. The fact of filing similar application by the Petitioners before the learned J.M.F.C. at Solapur, was brought to the notice of the trial Court. The learned Magistrate has rightly recorded findings that, since the application filed by the Petitioners under D.V. Act before learned J.M.F.C. at Solapur was withdrawn by Petitioners and it was not decided on merits, the application before the said Court was maintainable. The Respondent has admitted the relations with the Petitioners and he has duty bound to pay maintenance to his wife and children. The Respondent No.1 is serving in Nerul Sahakari Speciality Hospital and Research Centre and draws monthly salary of Rs.50,000/- per month. He owns 12 acres agricultural land and other properties.

6. The Respondent No.1 has filed affidavit-in-reply opposing the relief sought in this petition. He has also relied upon documents annexed to the affidavit-in-reply. Learned Advocate for Respondent No.1 submitted that, there is no infirmity in the order passed by the learned Sessions Judge. The respondent No.1 had suffered losses in the business in the year 1997 and he shifted to Akkalkot. He started his medical store at Akkalkot. The Petitioner No.1 had not come before the Court with clean hands. She has suppressed the fact that, she had already filed similar kind of proceedings before

the Court at Solapur. After filing the proceedings before the Court of learned J.M.F.C. Pune she withdrew the proceedings on 08.12.2018. The son has filed Regular Civil Suit No.871 of 2018 before the Civil Judge Junior Division at Aausa for declaration and possession in respect of land bearing Gat No.543 situated at Village Tungi Budruk, Taluka Aausa, Dist. Latur which is the ancestral property of Respondent No.1. Their daughter is employed and she is earning salary. Their son Ajay is also earning the salary. For a period of 15 years, the Petitioner No.1 did not file any proceedings for maintenance. She never demanded money for children as she had received the amount of Rs.15,00,000/- of the material which was lying in the medical store of Respondent No.1 at Akkalkot.

7. It is pertinent to note that, the proceedings in Criminal Misc. Application No.949 of 2017 initiated by Petitioner No.1 were withdrawn before the Lok Adalat vide order dated 08.12.2018. The said order clearly indicate that, the applicant therein has filed pursis stating that she has filed another case at some other place against the opponents. Hence, she does not want to proceed with the matter. Therefore, the case stands withdrawn and the proceedings are closed.

8. The order dated 17.01.2020 passed by the learned J.M.F.C. was passed by the examining the factual aspects in detail. It is a

well reasoned order. The learned Magistrate by way of interim relief directed that, till the decision of the main application, the Respondent No.1 shall pay an amount of Rs.7,000/- per month to Petitioner No.1. The Court further directed that, the Respondent No.1 shall not sell the properties in his name and shall not create third party interest in respect to the said properties. The order also indicate that, the Respondents have opposed the grant of relief on the ground that, the Petitioner No.1 had suppressed the vital facts. The Petitioner No.1 had shifted the proceedings under Section 125 of Cr.P.C. as well as under the D.V. Act and that the said information was not provided in the application. The learned Advocate has noted that the order dated 08.12.2018 withdrawing the proceedings in Criminal Misc. Application No.949 of 2017 was placed on record. The learned Magistrate has also observed that, even if the applicant had preferred an application under Section 125 of Cr.P.C., it is permissible for her to file an application under the provisions of D.V. Act. It was also observed that, the Petitioner No.1 had withdrawn the proceedings initiated before the Court of learned J.M.F.C. at Solapur and the said application was not decided on merits. The learned Advocate considered the factual aspects of the matter and passed the order dated 17.01.2020. There was no reason to set aside the said order. The learned

Sessions Judge has apparently committed a mistake in setting aside the order dated 17.01.2020. The impugned order dated 30.03.2021 indicated that the Petitioner Nos.1 and 2 have filed application for maintenance under Section 125 of Cr.P.C. Application under D.V. Act in addition to the application under Section 125 of Cr.P.C. However, it will be bounden duty of the wife to disclose whether she is getting any maintenance under Section 125 of Cr.P.C. The Petitioners had suppressed the fact of filing application under Section 125 of Cr.P.C. It was further observed that the application under Section 125 of Cr.P.C. was filed before the learned J.M.F.C. at Akkalkot stating that she is residing within the jurisdiction of that Court. The Petitioner No.1 filed application under D.V. Act before learned J.M.F.C. at Solapur claiming that, she is residing within jurisdiction of that Court and the present application is filed before the learned J.M.F.C. Pune stating that she is residing within the jurisdiction of J.M.F.C. Pune. She is filing applications at her whims at different places. The Petitioner No.1 and 2 have not come before the Court with clean hands except bare words there is nothing on record to show that the Appellants/Respondent No.1 has purchased properties in the name of Respondent No.3 therein. The learned Sessions Judge had overlooked the purpose of D.V. Act. Without analysing the merits of

the case, the order of learned Magistrate was set aside primarily on the ground of suppression of fact. The learned Sessions Judge failed to consider that the Petitioners had brought to the notice of the Court of learned J.M.F.C. that the proceedings pending before the Court at Solapur vide Misc. Application No.949 of 2017 were withdrawn. The order passed by the learned Sessions Judge is contrary to law and material on record. The impugned order passed by Sessions Court deserves to be set aside. This Court had passed Interim Order dated 9th July 2021 with an observation that prima facie, the Appellate Court committed an error in interfering with the findings of the trial Court. Considering that what was directed by the trial Court was payment of maintenance amount of Rs.7,000/-, in the interest of justice, it is necessary to stay the impugned order. The respondent was directed to pay to the petitioners sum of Rs.7,000/- per month starting from 1st July 2021 till further orders. The petitioner had made grievance that the interim order was not fully complied by respondent No.1 since I am setting aside the impugned order passed by Sessions Court, the order dated 17.01.2020 passed by Court of JMFC, Pune would stand revived.

9. I pass the following order :

ORDER

- i. Criminal Writ Petition No. 2528 of 2021 is allowed and disposed of;
- ii. Impugned order dated 30.03.2021 passed by Additional Sessions Judge – 10 in Criminal Appeal No.197 of 2020, setting aside order dated 17.01.2020 passed below Exhibit – 5 in Criminal M.A. No. 2219 of 2018 by J.M.F.C. (A.C. Court), Pune and rejecting application Exhibit – 5 is quashed and set aside;
- iii. Order dated 17.01.2020 passed by JMFC, Pune below Exhibit – 5 in Criminal M.A. No.2219 of 2018 stands restored.

(PRAKASH D. NAIK, J.)