



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

**906 CRIMINAL WRIT PETITION NO. 1660 OF 2024
with CRIMINAL APPLICATION NO. 4002 OF 2024**

**NARSINHA UTTAM GUNALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

.....
Advocate for Applicant : Mr. Kale Netaji Ganpatrao
APP for Respondents/State : Mr. V.M. Chate
.....

**CORAM : Y.G. KHOBRAGADE, J.
DATE : 09.10.2024**

PC.:-

1. Heard advocate Mr. Kale the learned counsel appearing for the Petitioners at length.
2. By the present petition, the Petitioners have impugned the order dated 06.08.2024 passed by the learned Additional Sessions Judge, Udgir, in Criminal Appeal No.10/2024, thereby affirming the order dated 04.04.2024 passed below Exh.24 by the learned J.M.F.C., Court No.3, Udgir in PWDV Application No.56/2021, whereby the request of the present Petitioners / Original Respondents for recording the evidence of the Respondent/Wife after receipt of report of the Protection Officer was rejected.
3. The learned counsel appearing for the Petitioners vehemently

canvassed that the Respondent-Wife filed a proceeding under Section 12 of the Protection of Women from Domestic Violence Act 2005 (in short the PWDV Act) and claimed various reliefs. On 29.09.2021, the learned Trial Court issued notice to the Non-Applicants, however, while issuing the notice the report of the Protection Officer was called. After service of summons, the present Petitioners appeared in the matter and filed written statement on 15.01.2022. Thereafter, the aggrieved person/Respondent-Wife filed evidence affidavit, however, prior to recording further examination-in-chief, the present Petitioners filed an application (Exh.24) for recording the evidence after receiving the report of the protection officer. On 04.04.2024, the learned Trial Court rejected the said application (Exh.24). The Petitioners assailed the said order in Appeal No.10/2024 before the Sessions Judge. On 06.08.2024, the learned Appellate Court passed the impugned order and dismissed the appeal.

4. The learned counsel appearing for the Petitioners canvassed that as per the provisions of Section 12 of the PWDV Act, the Magistrate is required to take into consideration the report of Protection Officer in respect of domestic incidents. Further, though the learned Trial Court had called the report of the Protection Officer while issuing notice on 29.09.2021 but prior to receipt of said report, the Respondent aggrieved person filed evidence

affidavit and tried to lead the evidence.

5. The learned counsel appearing for the Petitioners canvassed that both the Courts below have failed to consider the provisions of Section 12 (1) of PWDV Act which provides that before passing an order on such application the Magistrate is required to take into consideration the report of Protection Officer in respect of domestic violence, however, without receipt of report of the Protection Officer, the evidence of the aggrieved person cannot be recorded. Therefore, the impugned judgment as well as order dated 04.04.2024 passed below Exh.24 by the learned J.M.F.C. needs to be quashed and set aside.

6. Section 12 (1) of the PWDV Act provides as under:

"12. Application to Magistrate- (1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider."

7. Therefore, on plain reading of Section 12 (1) of the Act it clearly suggests that when a domestic incident is reported by the Magistrate from the Protection Officer or the service provider in that case the report of the Protection Officer is required to be considered, however, when an aggrieved

person files an application by herself or with the assistance of an advocate and without the assistance of the Protection Officer or a service provider in that circumstances the role of the Protection Officer or a service provider is not envisaged. Therefore, merely the Trial Court passed an order on 29.09.2021 below Exh.1 in PWDV Proceeding No.56/2021 and had called the report of the Protection Officer itself does not give any right to the Petitioner/Original Respondent-Husband to rely on the said report because the present Respondent No.1 aggrieved person did not approach either through the Protection Officer or any other person on her behalf but she directly filed an application under Section 12 before the Magistrate.

8. On perusal of record it appears that the learned Appellate Court passed the impugned order and considered the provisions of Section 12 (1) of the Act affirming the order dated 04.04.2024 passed below Exh.24 in PWDV Application No.56/2021 which does not appear perverse, illegal, bad in law and no interference is called at the hands of this Court.

9. In view of above discussion present Criminal Writ Petition is dismissed. Accordingly, Criminal Application No.4002/2024 is also disposed off.

[Y.G. KHOBRADE, J.]