

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.126 OF 2025

Himanshu Subhash Thakare	...Applicant
<i>Versus</i>	
The State of Maharashtra & Ors.	...Respondents

Mr. Amol B. Jagtap (through Video Conference), for the Applicant.
Ms. A. S. Gotad, APP, for the Respondent No.1-State.

CORAM: MADHAV J. JAMDAR, J.
DATED : 1st APRIL 2025

PC:-

1. Heard Mr. Jagtap, learned Counsel appearing for the Applicant and Ms. Gotad, learned APP appearing for the Respondent No.1-State.

2. The challenge in this Criminal Revision Application is to the order dated 10th January 2025 passed by the learned Additional Sessions Judge-11, Pune in PWDVA Appeal No.155 of 2024. By the impugned order the said Appeal is dismissed. The said Appeal has been filed challenging the order dated 24th July 2023 passed by the learned JMFC, Pune below Exhibit-30 in Criminal Misc.

Application No.1407 of 2021. The said Application bearing Exhibit-30 has been filed by the present Applicant/Husband i.e. Respondent No.1 in said D.V. proceedings to dismiss the main DV Application.

3. It is the contention of Mr. Jagtap, learned Counsel appearing for the Applicant that the Respondent-Wife has filed the proceedings in the Court of learned JMFC, Amravati being PWDVA Application No.26 of 2020 (Amaravati Case). The said proceedings have been returned to the Complainant for presenting it before the Court at Pune and when the said proceedings are in transit, pursuant to the direction of learned JMFC, Amravati bearing Criminal M.A. No.1407 of 2021, the Applicant has filed fresh D.V. proceedings in the Court of learned JMFC, Pune. Therefore, the Applicant has filed Application bearing Exhibit-30 seeking disposal of the main D.V. proceedings. Mr. Jagtap, learned Counsel appearing for the Applicant submits that the said proceedings are barred by the principles of *res judicata* and insofar as permission under Order 23 of the Code of Civil Procedure, 1908 (“CPC”) has not been obtained.

4. Perusal of the said Application bearing Exhibit-30 shows that apart from the contention regarding *res judicata* and under Order 23 some other contentions are also raised that the premises is not shared household as the parties are staying separate from 21st September 2019.

5. The factual position on record shows that the marriage between the Applicant and the Respondent No.2 took place on 8th June 2011. Respondent No.3 is the son of the Applicant and the Respondent No.2. The Respondent Nos.2 and 3 filed proceedings under the provisions of the D.V. Act in Amravati Court. The learned JMFC, Amravati by order dated 20th January 2020 directed that the case be transferred to the Court of learned JMFC, Pune. The Respondent No.2 filed fresh D.V. proceedings bearing Criminal Misc. Application No.1407 of 2021 in the Court of learned JMFC., Pune.

6. As far as Amravati case is concerned, the learned JMFC, Pune while rejecting said Exhibit-30 Application has held that the said Amravati case has not been decided on merits and the Respondent-Wife filed fresh D.V. proceedings on new facts and

domestic violence incident etc. As far as the contention regarding *res judicata* is concerned, learned JMFC held that as the D.V. proceedings filed in Amravati Court is not decided finally therefore, the principles of *res judicata* will not apply and there is no need to obtain permission of Court under Order 23 of the CPC. The learned Appellate Court has observed that admittedly, the Applicants i.e. the present Respondents-Wife and son are staying at Wakad, Pune and therefore, the Court of learned JMFC, Pune has jurisdiction to try the proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2012. Learned Sessions Court also observed that although learned JMFC, Amravati has directed by order dated 20th January 2020 to transfer the original record of said case to the learned JMFC, Pune, the said record has not been sent. It has been further observed that the proceedings under Section 12 of the D.V. Act are *quasi* civil in nature and the provisions of DV Act are made with an object to provide a remedy under the Civil law which intends to protect the women from being the victims of domestic violence and to prevent the occurrence of domestic violence in the society. It is also observed that as the proceedings are not disposed of by the learned JMFC, Amravati on merits, the applicability of principles of *res*

judicata or bar to file fresh Application under Section 12 of the D.V. Act is not attracted. It is also observed that the Applicants have disclosed about the filing of the D.V. proceedings before the learned JMFC, Amarvati in paragraph 60 of the Application filed under the provisions of D.V. Act bearing Criminal Misc. Application No. 1407 of 2021.

7. Thus, considering the reasons given in the impugned orders by both the Courts, some of which are indicated herein above, the same clearly show that in the facts and circumstances of this case possible view is taken. Therefore, no case is made out for interfere in the impugned orders.

8. Both the Courts after recording the cogent reasons have rejected the Application of the Applicant seeking dismissal of the D.V. proceedings.

9. It is required to be noted that by filing Exhibit-30 Application, in said D.V. proceedings filed before the Court of JMFC, Pune and subsequent Appeal the Applicant/Husband has ensured that the Court does not deal with the said D.V. Proceedings

on merits including passing of any interim order. Thus, in fact the Applicant has ensured that even order of maintenance is also not passed in favour of the Respondent No.3-minor son for last about 5 years.

10. Accordingly, the Civil Revision Application is dismissed, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]

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