

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

WRIT PETITION NO. 2112 OF 2021

Keki Edulji Turel	}	
Age: 74 years, Occ: Surgeon	}	
of Mumbai Indian in habitant	}	
Residing at 643, Gulshan Terr-	}	
ace Rustom Tirandaz Road,	}	
Dadar Parsi Colony, Mumbai-	}	
400014	}	...Petitioner

Versus

Khursheed Keki Turel	}	
Age: 74 years, Occ: Doctor	}	
of Mumbai Indian Inhabitant	}	
Residing at 628, Turel Terrace,	}	
3 rd Floor AB Homavazir Road,	}	
Dadar Parsi Colony, Mumbai	}	
400014.	}	...Respondent

Mr. Ashwin Shete a/w Mr. Rohit Jain i/b Jayakar & Partners, for the Petitioner.

Ms Taubon F. Irani a/w Ms Sushmita Sherigar and Ms Moksha Kothari, for the Respondent.

Ms Dhanalakshmi Krishnaiyar, APP, for the Respondent-State.

CORAM : MANJUSHA DESHPANDE, J.

RESERVED ON : 04th DECEMBER 2025

PRONOUNCED ON : 19th DECEMBER 2025

JUDGMENT:

1. The moot question that arises for the determination in the present Writ Petition is whether an Appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (for short “the PWDV Act”) is maintainable against a procedural order, under the PWDV Act.

2. This Writ Petition has been filed by the Petitioner-husband against the order passed by the Court of Sessions for Greater Mumbai, at Mumbai, below Exhibit– 3 in Criminal Appeal No. 70 of 2020.

3. The pleaded facts of the case leading to filing of the present Writ Petition can be summarized as under:

3.1 The Petitioner and Respondent were married on 5th January 1975 and have two grown-up sons. It is not in dispute that, although they are residing separately, they continue to be legally married. Admittedly, they have been residing separately since 2012, and have not cohabited since. In 2018, the Respondent-wife instituted proceedings invoking Section 12 of the PWDV Act, before the Metropolitan Magistrate, 30th Court, Kurla, Mumbai. The complaint was registered as C.C./02/DV/2018 with allegations of Domestic violence spanning for several years. The Petitioner filed an application below Exhibit 15 before the Magistrate seeking dismissal of the complaint at the threshold on the ground that it was not maintainable. The Petitioner *inter alia* contended that; (i) the allegations pertain to incidents that have taken place long back for the period, prior to filing of the complaint. (ii) There was no subsisting domestic relationship, since the parties have been residing separately for more than six years.

3.2 The application of the Petitioner has been rejected by the Metropolitan Magistrate, vide order dated 19th December 2019, holding that the question of limitation and existence of Domestic relationship could not be decided solely on the basis of pleadings, it would require evidence. It was also observed that merely living separately did not imply that relationship had ended, since the status of the parties as

husband and wife still subsists. The Magistrate found that *prima facie* the case of 'Economic abuse' and 'Domestic Violence' has been made out by the Applicant.

3.3 Being aggrieved by the said order, the Petitioner preferred Appeal No. 70 of 2020, under Section 29 of PWDV Act, 2005 before the Session Court, Mumbai, with a prayer for stay to the proceedings, pending in the trial Court. The prayer for stay by the Petitioner was rejected by the Sessions Court, Mumbai. After the period of lock-down was over, the learned Sessions Judge took up the Respondent's preliminary objection and heard the parties on the limited issue of maintainability. By order dated 9th October 2020, the Sessions Court for Greater Mumbai, at Mumbai has passed an order rejecting the objection on maintainability of the complaint application holding that the order passed thereon, is purely a procedural order and not an order passed under Section 18 to 22 of the PWDV Act. Hence the Appeal against the said order under Section 29 was not maintainable.

4. I have heard the learned counsel for the respective parties and I have also gone through the documents placed on record with the assistance of the parties.

5. Mr. Ashwin Shete, learned counsel appearing for the Petitioner submits that, the orders impugned have been passed by the learned Judge arbitrarily, without considering the purport of Section 29 of the PWDV Act. Similarly the objection of the Petitioner as regards maintainability is also not properly appreciated by the learned Magistrate. It is an admitted position that the Petitioner and Respondent have been residing separately since 2012, therefore there is no Domestic

relationship between the parties since long, therefore there was no occasion for commission of any Domestic violence.

6. Existence of 'Domestic relationship' is a necessary condition for maintainability of application under Section 12 of PWDV Act. Admittedly, since they are residing separately since 2012, they do not share the same house, as such the other necessary condition for maintainability of application, i.e. the 'shared household', is also not fulfilled to make the complaint of the Respondent maintainable. In absence of these two necessary indispensable conditions, the Application filed by the Respondent is not maintainable.

7. The Petitioner has raised his objection pointing out to the learned Magistrate, that the Application of the Respondent is not maintainable on two grounds. Firstly, on the ground of inordinate delay in filing the complaint with respect to the alleged incidents referred in the complaint, which pertains to the period starting from the year 1979 upto the year 2009. It was contended that all the incidents referred in the complaint were old and have occurred several years prior to filing of D.V. complaint. In fact, the Petitioner on his own volition, has left their matrimonial house, viz the Turel Terrace flat to the Gulshan Terrace flat, due to the matrimonial discord, existing between them. Due to the longstanding estrangement of the parties, no Domestic relationship exists between them. They have not spoken with each other, nor there is any interaction between them. Hence, according to him, on the ground of delay in filing the complaint and, due to absence of Domestic relationship between the Petitioner and the Respondent, the complaint for Domestic violence is not at all maintainable. In view of the facts of

this matter, without application of his mind the learned Magistrate has erroneously rejected his application, which is filed at Exhibit-15.

8. The Magistrate has recorded an erroneous finding that the Respondent's case falls under Section 2(f) of the Act, relying on the exchange of notices between the parties, regarding the sale of their joint property. Thus, treating this exchange of communication as 'Economic abuse', the complaint of the Respondent has been entertained by the learned Magistrate. It is submitted that though the Petitioner has cited various judicial pronouncements in support of his contention about maintainability of the complaint, the learned Magistrate, with blatant disregard to the decisions, has rejected the application filed by the Petitioner, which was further challenged by him before the Sessions Court, Greater Mumbai.

9. It is contended that, even before the Sessions Court, the learned Judge of the Sessions Court has failed to appreciate the scope of Section 29 of the PWDV Act. The learned Additional Sessions Judge has framed an issue, whether Appeal in the present form is maintainable under Section 29 of the PWDV Act. While arguing, the learned counsel for the Petitioner has pertinently pointed out that, a remedy under Section 29 of the PWDV Act, is the only remedy available for the Appellant.

10. The bare reading of the section itself makes it clear that it does not create any category of orders that can be challenged under Section 29 in Appeal. The remedy of Appeal is available to any party, who is aggrieved by an order passed by the Magistrate. Every order passed in the complaint before the Magistrate is appealable under Section 29 of

the PWDV Act. In support of his submission, the Petitioner has relied on the following case laws:

“i) Nandkishore Pralhad Vyawahare v. Mangala w/o Pratap Bansar (2018 (3) Mh.L.J.913)

ii) Siddharth Sabarwal v. The State of Maharashtra (2019 SCC online Bom 3106).

iii) Abhijeet Prabhakar Jail v. Manisha Abhijeet Jail and Ors. (2018 SCC online Bom 1206).

iv) Narayan Babi Salgaonkar v. Jayshree alias Manasi Narayan Salgaonkar (2017 SCC online Bom 723).”

11. It is contended that, the aforesaid decisions were not appropriately appreciated, as a result, it is held that the Appeal against the impugned order is not an apt remedy. Accordingly, the objection raised by the Petitioner has been turned down by the order dated 9th October 2020.

12. The learned counsel for the Petitioner submits that both the Courts have committed a grave error. The Magistrate by refusing to entertain his objection to the complaint on the ground of delay as well as objection to the maintainability and The Additional Sessions Judge, by refusing to entertain his Appeal filed under Section 29 of the PWDV Act. According to him, in view of the judgments relied upon by him, the orders passed by the Courts below deserve to be quashed and set aside.

13. Responding to the submissions of the Petitioner, Ms Taubon Irani, learned counsel for the Respondent-wife submits that, there is no error either of fact or of law, in the orders under challenge in the present Writ Petition. The Respondent-wife has filed the complaint against the Petitioner in the year 2018, Only with a view to support her case of

Domestic violence she has narrated in detail the cruel treatment and the harassment meted out to her, by the Petitioner since their marriage, which does not mean that the Respondent-wife is relying only on the old and stale incidents. The Respondent has narrated the incidents as well as the conduct of the Petitioner, up to the period of filing of the complaint. The learned Magistrate has rightly interpreted the subject matter of exchange of communication between the Petitioner and the Respondent to hold that it amounts to 'Economic abuse'. The subject matter of the communication refers to the sale of the property jointly owned by the parties. Apart from that, though the Petitioner is claiming that there is no Domestic relationship between them, the fact remains that they are still married and she is residing in the matrimonial home. Therefore, it cannot be held that there is no 'Domestic relationship' between the parties.

14. While responding to the objection about the delay in filing of the complaint, the learned counsel relies on the decision of this Court in case of *Hemant Namdeorao Nagrale Vs. Pratima Hemant Nagrale {Criminal Application 45 of 2014}* decided on 24th January 2020. In the said judgment, this Court has taken a view that Section 468 of the Cr.P.C. has no application to the proceedings filed under Section 12 of the PWDV Act. Section 12 of the PWDV Act is an enabling provision, whereas Sections 18 to 22 are providing remedy to the aggrieved persons, to seek different reliefs like protection and residence orders; monetary reliefs; custody of minor; and compensation. These relief cannot be restricted by applying provision of Limitation Act, or for that matter Section 468 of the Cr.P.C.

15. In support of maintainability of Appeal under Section 29 of the PWDV Act, the learned counsel relies on the decision of this Court in case of *Aditi Vivek Kumar Wadhera Vs. Vivek Kumar Varinder Wadhera & Ors. {Criminal Writ Petition No.2542 of 2014}*, wherein this Court in its order dated 24th September 2014, has expressly held that the word “order” referred in Section 29 of the PWDV Act means the order passed by the Magistrate in exercise of powers under Sections 18, 19, 20, 21, 22 and 23 of the Act. A preliminary order holding the proceedings to be not maintainable under the PWDV Act, does not give any relief to the aggrieved person nor does it refuse any relief. Therefore, it is not appealable under Section 29 of the PWDV Act.

16. The learned counsel submits that the powers of this Court under Article 227 of the Constitution of India are limited to cases of arbitrary orders or refusal to exercise powers, or, in cases of jurisdictional error, the order passed by the subordinate Courts, can be interfered with by this Court. It is submitted that this is not a fit case to exercise such powers. Thus, according to the learned counsel, both the orders passed by the Court of Metropolitan Magistrate, as well as the order of Additional Sessions Judge, Greater Mumbai, is very much in consonance with the law, i.e. the Protection of Women from Domestic Violence Act, 2005, which does not deserve any interference, hence the Writ Petition deserves to be dismissed.

17. After hearing the learned counsel for the respective parties at length and after going through the prayers made in the Writ Petition, this Court is called upon to exercise its powers under Section 482 of the Cr.P.C. as well as supervisory jurisdiction under Article 227 of the Constitution of India, for quashing and setting aside the orders dated

19th December 2019, passed by the Metropolitan Magistrate, 30th Court, Kurla, and the order dated 9th October 2020 passed by the learned Sessions Court, Mumbai. In the alternate one more prayer seeking permission to convert the the Appeal No. 70 of 2020 filed by the Petitioner before the Sessions Judge into Criminal Revision Application, and direct the Sessions Judge to expeditiously hear the Criminal Revision Application is also made by the Petitioner.

18. Upon perusal of the Application of the Petitioner, raising objection to the maintainability of the complaint made by the Respondent, it is evident that the objection raised is based on two grounds. First is the delay in making complaint and the second is objecting the maintainability, on the ground of absence of Domestic relationship. The complaint made by the Respondent details, instances of infidelity and harassment post-marriage (1975) up to their separation in the year 2012, and even some instances thereafter. The learned Magistrate has rightly noted the exchange of communications, where the Respondent alleged the Petitioner of trying to sell their flat without her knowledge, and called upon him to desist from such transactions. Petitioner has also responded to the communication of the Respondent dated 14th January 2017, vide communication dated 20th January 2017. Further communications about his conduct also forms part of record, therefore it cannot be said that there is no 'Domestic relationship' between the parties. Although they were residing separately, their marriage is not dissolved.

19. The term Domestic relationship is defined under Section 2(f) of the PWDV Act, which reads thus:

“Section 2(f):- “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.”

20. The definition of ‘Domestic Relationship’ contemplates various types of relations, it gives a wider meaning to the said word. It covers various relationships including the residence shared together by the two persons in a household, at some point of time, when they are related by consanguinity, marriage or any other relationship. Therefore, it can be unerringly held that, there is a Domestic relationship between the Petitioner and the Respondent. More particularly, in view of the fact that the Respondent-wife is still residing in the ‘shared household’ where the parties had last resided together.

21. The definition of ‘shared household’ has been elaborately considered by the Hon’ble Supreme Court in case of ***Prabha Tyagi Vs. Kamlesh Devi***¹. The Hon’ble Supreme Court in no uncertain terms has held in paragraph 54, which reads as under:

“54. Bearing in mind the aforesaid discussion, Question 2, namely, “whether it is mandatory for the aggrieved person to reside with those persons against whom the allegations have been levelled” is accordingly answered. It is held that it is not mandatory for the aggrieved person to have actually lived or resided with those persons against whom the allegations have been levelled at the time of seeking relief. If a woman has the right to reside in a shared household, she can accordingly enforce her right under Section 17(1) of the DV Act. If a woman becomes an aggrieved person or victim of domestic

1 (2022) 8 SCC 90

violence, she can seek relief under the provisions of the DV Act including her right to live or reside in the shared household under Section 17 read with Section 19 of the DV Act.”

Therefore, the definition of ‘shared household’ and the interpretation given by the Hon’ble Supreme Court, does not leave any doubt that the complaint filed by the Respondent, is very much maintainable.

22. The objection regarding the delay would also not survive since the averment in the complaint itself narrates various incidents right from the year 1975 to 2009; considering their existing ‘Domestic Relationship’ hence, the objection regarding delay in filing the complaint is not tenable.

23. As far as the question of maintainability of Appeal against the order of rejection of Application filed by the Petitioner under Section 29 of the PWDV Act, is concerned, this Court had an occasion to address the issue about scope of Section 29 of the PWDV Act, while entertaining the orders other than those made in exercise of powers under Section 23(1) or (2), of the PWDV Act. This Court in the case of ***Abhijit Bhikaseeth Auti V/s State of Maharashtra & Anr. {Criminal Writ Petition No.2218 of 2007}***, has laid down the conditions under which an Appeal is maintainable under Section 29 of the Act, which reads thus:

25. Thus, the conclusions which can be summarised are as under:

(i) An appeal will lie under section 29 of the said Act against the final order passed by the learned Magistrate under sub-section 1 of section 12 of the said Act;

(ii) Under sub-section 2 of section 23 of the said Act, the learned Magistrate is empowered to grant an ex-parte

ad-interim relief in terms of sections 18 to 22 of the said Act. The power under sub-section 1 is of granting interim relief in terms of sections 18 to 22 of the said Act. Before granting an interim relief under sub-section 1, an opportunity of being heard is required to be granted to the respondent.

(iii) An appeal will also lie against orders passed under sub section 1 and sub section 2 of the section 23 of the said Act which are passed by the learned Magistrate. However, while dealing with an appeal against the order passed under section 23 of the said Act, the Appellate interfere with the Court will usually not exercise of discretion by the learned Magistrate. The appellate Court will interfere only if it is found that the discretion has been exercised arbitrarily, capriciously, perversely or if it is found that the Court has ignored settled principles of law regulating grant refusal of interim relief.

(iv) An appeal under section 29 will not be maintainable against purely procedural orders which do not decide or determine the rights and liabilities of the parties.

24. Hence the matter in issue in this situation stands covered by the decision of this Court, and there is no ambiguity whatsoever, therefore, the present case would stand covered by the conclusions summarized in the paragraph 25 of ***Abhijit Bhikaseth Auti (supra)***, which has been referred by the Sessions Court while deciding the Appeal filed by the Petitioner.

25. So far as the prayers for converting the Appeal No. 70 of 2020, pending before the Sessions Judge into a Criminal Revision Application is concerned, at this stage, the prayer of the Petitioner cannot be entertained. However, Petitioner is at liberty to pursue the remedies available to him under law.

26. Therefore, the challenge raised by the Petitioner to both the orders impugned fails. As such, the Writ Petition being devoid of merit stands dismissed.

27. No order as to cost.

[MANJUSHA DESHPANDE, J.]

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