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

**CRIMINAL REVISION APPLICATION NO.289 OF 2017**
**WITH**
**CRIMINAL APPLICATION NO.58 OF 2019**
**AND**
**CRIMINAL APPLICATION NO.3629 OF 2023**

Pravin s/o Arjun Jadhav ….APPLICANT

VERSUS

1. Pranita w/o Pravin Jadhav
2. Mst. Siddhey s/o Pravin Jadhav
3. State of Maharashtra ….RESPONDENTS

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Mr Hemant Surve, Advocate for Applicant
Mr S. N. Pagare, Advocate for Respondent No.1
Mr C. V. Bhadane, APP for Respondent No.3/State

…..

**CORAM : SUSHIL M. GHODESWAR, J.**

**DATE : 04th SEPTEMBER 2026**

**P. C. :**

1. By this revision application, the applicant/husband is challenging the impugned judgment and order dated 19/09/2017, passed by the learned Sessions Judge-13, Aurangabad in Criminal Appeal No.25/2014, vide which the learned Sessions Judge confirmed the order dated 26/11/2013, passed by the learned Judicial Magistrate First Class, Aurangabad in Criminal Misc. Application No.76/2013,

vide which, the applicant/husband has been directed to pay maintenance of Rs.10,000/- per month to the respondent/wife and minor son.

2. The marriage between the applicant/husband and respondent No.1/wife took place on 06/06/2010. On 26/03/2012, respondent No.2/son was born. Thereafter, the dispute between the husband and wife started, and the respondent/wife started staying separately. On 08/01/2013, the respondent/wife filed proceedings under the provisions of the Protection of Women from Domestic Violence Act, 2005 (for short 'D.V.Act'). The main allegation in the said application was that the applicant/husband is having an extra-marital affair with a lady, namely, Mandakini Patil. In the very said application, the respondent/wife claimed for damages, monetary relief, and separate accommodation.

3. The aforesaid application was resisted by the applicant/husband by filing a detailed reply. The evidence of the parties came to be recorded. The learned Judicial Magistrate First Class, however, on 26/11/2013, without rendering a finding as to whether there was any domestic violence or not, granted monetary relief to the tune of Rs.10,000/- p.m. to both the respondents.

4. Being aggrieved by the said verdict, the applicant herein approached the Court of Sessions by way of appeal bearing Criminal Appeal No.25/2014. The learned Additional Sessions Judge-13, Aurangabad, vide her judgment and order dated 19/09/2017, dismissed the said appeal, thereby confirming the judgment and order passed by the learned Judicial Magistrate First Class, Aurangabad. Hence, the applicant has approached to this Court by filing this revision application under Section 397 of the Code of Criminal Procedure (Cr.P.C.)

5. Heard Mr Surve, learned Advocate for the applicant, Mr Pagare, learned Advocate for respondent No.1 and learned APP Mr Bhadane for respondent No.3/State.

6. Mr. Surve, learned Advocate for the applicant, at the very outset, very vehemently submits that both the Subordinate Courts have committed a gross error in law and passed the impugned judgments, which are not sustainable in the eyes of law. According to him, there is no evidence of domestic violence committed by the applicant. He submits that both the Courts were required to frame the issue as regards as to whether there exists domestic violence or not. He further submits that the learned Trial Courts have failed to frame a specific

issue regarding whether or not the applicant had committed acts of domestic violence. Without framing the said issue, the learned Courts below proceeded further to pass the impugned orders. He further submits that, in order to grant any relief to the respondent/wife, the learned Trial Court was required to frame a specific issue as to whether domestic violence had occurred.

7. Mr Surve takes this Court through the provisions of the Protection of Women from Domestic Violence Act. As per Section 12 thereof, any aggrieved person can approach the Court by filing an application seeking appropriate relief, which may include the relief of an order for payment of compensation or damages. He submits that the D.V. Act is enacted to provide more effective protection to the rights of women guaranteed under the Constitution of India, who are victims of domestic violence of any kind, occurring within the family, and to prevent the occurrence of domestic violence in the society. He, therefore, submits that, if the D.V. Act itself is enacted in order to protect the effective rights of women, who are victims of violence, in that event, it is necessary to ascertain whether there exists domestic violence or not. The Act confers a right of remedy to wives and women in a domestic relationship.

8. Mr Surve further points out that, during her cross-examination, the respondent/wife failed to provide any evidence regarding the alleged extramarital affair of the applicant/husband. Furthermore, it was the respondent/wife who had voluntarily deserted the applicant. He then submits that the applicant has specifically pointed out that after the marriage, the respondent/wife had voluntarily left his company and due to which, the applicant had also filed a petition for restitution of conjugal rights against the respondent/wife in the Court. However, it is the respondent/wife who herself refused to cohabit with the applicant/husband. According to him, the respondent/wife is well-educated and doing tailoring work. Therefore, according to the learned Advocate for the applicant, the impugned judgment and orders passed by the learned Trial Court as well as the Appellate Court against the applicant, are not sustainable in the eyes of law. He, therefore, prays for allowing this revision application by setting aside the judgment and orders of the Courts below.

9. Per contra, Mr. Pagre, learned Advocate for the respondent No.1/wife, strongly opposes the instant revision application. According to him, there is no error or illegality in the orders passed by the Subordinate Courts. He submits that the impugned judgment and orders, being correct and proper, require no

interference by this Court. He also submits that there are no strong grounds to upset the findings of the learned lower Courts. He then submits that the respondent/wife is totally dependent upon the maintenance being provided by the applicant/husband, and also maintaining respondent No.2/minor son, and therefore, if the impugned orders are disturbed, it will be very difficult for the respondent/wife to survive. Hence, he prays for the rejection of the instant revision application.

10. Having heard the learned Advocates for the respective parties, I have perused the impugned judgment and orders. It has been rightly pointed out to this Court that both the Courts below proceeded to decide the matters without framing any specific issue for determination regarding domestic violence. The issues framed by the Judicial Magistrate are as under :-

| अ.नु. | मुद्दे | निष्कर्ष |
|---|---|---|
| 1 | अर्जदार उत्तरार्थीकडुन निवारा भत्ता मिळणेचे अनुतोषस पात्र आहे काय ? | होय |
| 2 | अर्जदार उत्तरार्थीकडुन उदरनिर्वाह भत्ता मिळविण्याच्या अनुतोषास पात्र आहे काय ? | होय |
| 3 | अर्जदार नुकसान भरपाई मिळण्याचे अनुतोषास पात्र आहे काय ? | नाही |
| 4 | पारीत आदेश कोणता ? | अर्ज अंशतः मंजूर |

Thereafter, the issues or points framed by the Appellate Court are also required to be seen, which are as under :-

| | Points | Findings |
|---|---|---|
| 1. | Does applicant no.l proves that she is having no source of income to maintain herself and applicant no.2? | In the affirmative |
| 2. | Does the applicants are entitled for maintenance, as prayed for? | Accordingly |
| 2. | Does the interference of this court is warranted in setting aside impugned order? | In the negative |
| 3. | What order? | Appeal is dismissed as per final order. |

11. Admittedly, neither of the Courts below has framed a specific issue regarding whether domestic violence had occurred. When an aggrieved person files application claiming reliefs under Sections 12, 17, 18 to 22 of the Protection of Women from Domestic Violence Act, it is necessary for the purpose of adjudication of the said application to frame the issue regarding whether domestic violence occurred or not. In this respect, the Panaji Bench of this Court in the judgment delivered in the matter of **Jovita Olga Ignesia vs. Rajan Maria Coutinho and others, 2011 (1) AIRBomR 300,** observed that

the term "domestic violence" has a very wide amplitude, as defined under Section 3 of the Act. It includes physical abuse, sexual abuse, verbal and emotional abuse, and economic abuse, which in turn, inter alia, includes deprivation of all or any economic or financial resources. In the said case, this Court directed the learned Magistrate to frame issues regarding the reliefs claimed, hear the parties, consider the evidence produced by the parties, apply the applicable laws, and give a decision on each of the reliefs sought by the petitioner. Thus, this Court set aside the order passed by the Magistrate as well as the Appellate Court and remanded the matter back to the Magistrate to decide the application afresh.

12. In the judgment of Sunil Gangadhar Kadam and others vs. Jayshree Sunil Kadam and others, delivered on 16/03/2023 in Criminal Revision Application No.233/2018, this Court observed that domestic violence is a *sine qua non* for reliefs to be granted to an aggrieved person under the D.V. Act. The term "domestic violence" has been defined in the said Act. There are various types of domestic violence, namely, physical, mental, sexual, verbal, emotional, and economic. The burden to prove domestic violence lies on the aggrieved person. It was further observed that, the law is well settled that a person having remedies under various Acts may exercise them independently. The

Domestic Violence Act is a law in addition to, and not in derogation of the provisions of any other law, for the time being in force. A wife may simultaneously claim reliefs under the Domestic Violence Act as well as under Section 125 of the Code of Criminal Procedure. The tests to prove domestic violence and refusal and neglect to maintain, are different. There were no provisions in the Domestic Violence Act to test refusal and neglect to maintain. The concept of domestic violence is specific as provided in the Domestic Violence Act. It could not be compared with the concept under Section 125 of the Code of Criminal Procedure.

13. The respondent/wife in the case in hand, has failed to point out that the applicant has ever refused or neglected her. Therefore, this Court is of the opinion that the Appellate Court as well as the Trial Court were required to arrive at a conclusion that there exists domestic violence as defined under Section 3 of the Act, by specifically framing the said issue. Both the learned lower Courts, without framing the said issue, have proceeded further to grant maintenance to the respondent/wife.

14. This Court, at the Principal Seat, vide a judgment dated 04/07/2017 in Criminal Writ Petition No.17/2015 in the case of Mr.

Gurudas Sanvalo Naik vs. Mrs. Saanvi Gurudas Naik, observed that the finding that the complainant/wife was subjected to acts of domestic violence is a *sine qua non* for the Magistrate to entertain the application and grant reliefs.

15. In view of the above, as discussed above, the concept of refusal or neglect and granting maintenance to a wife in a D.V. case is, therefore, required to be decided after framing the issue as regards domestic violence. In the absence of a *prima facie* finding that respondent No.1 was subjected to acts of domestic violence, the impugned orders cannot be sustained. Therefore, this Court is of the opinion that the impugned orders are required to be quashed and set aside, by directing the learned Trial Court to proceed with the application by framing a specific issue as regards domestic violence between the parties. Thus, the instant revision application deserves to be allowed. Hence, I pass the following order :-

**ORDER**

(I) The criminal revision application stands partly allowed.

(II) The judgment and order dated 19/09/2017, passed by the learned Sessions Judge-13, Aurangabad in Criminal Appeal No.25/2014 and judgment and order dated 26/11/2013, passed by the learned Judicial

Magistrate First Class, Aurangabad in Criminal Misc. Application No.76/2013,are hereby quashed and set aside.

(III) The matter is remanded back to the learned Judicial Magistrate First Class, Aurangabad. The parties to appear before the learned Judicial Magistrate First Class, Aurangabad on 28/09/2026.

(IV) After hearing the parties, the learned Magistrate First Class, Aurangabad shall decide the application, as expeditiously as possible, after framing the issue of domestic violence.

(V) It is made clear that this Court has not considered the case of parties on merits. The Trial Court shall not be influenced by any observations made in this order.

16. The criminal revision application is partly allowed and disposed of with the above terms.

17. In view of disposal of criminal revision application, pending criminal applications also stand disposed of.

**[SUSHIL M. GHODESWAR, J.]**

sjk