



**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.338 OF 2026**

**MOMME KARL JAKOB LUSTIG
VERSUS
THE STATE OF GOA AND ANR.**

...

Mr. Parul Vedak (through VC) with Ms. Natasha Kerkar, Advocates for Petitioner.

Mr. S. G. Bhobe, Public Prosecutor for Respondent No.1/State.

Mr. Aadarsh Kothari (through VC) with Ms. Rajlaxmi Bhatkar, Advocates for Respondent No.2.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 28th SEPTEMBER, 2026.**

FINAL ORDER:-

1. The petitioner seeks quashment of Domestic Violence Proceeding bearing No.28/DVA/2024/A/C pending before Judicial Magistrate First Class, 'B' Court, Mapusa filed by respondent against petitioner.

2. The respondent instituted DV proceeding under Section 12 of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'DV Act, 2005') for various reliefs under Sections 18 to 22, which are as under:

- (i) *Order restraining petitioner from stalking her child or from entering in her residence;*
- (ii) *Order restraining petitioner from interfering with her and her child Koan repeating acts of domestic violence, from having unchaperoned access to her child, and any kind of access to her and family members, relatives, etc.*

- (iii) Order directing petitioner to pay rent amount due in respect of residence of respondent and child;*
- (iv) Order directing petitioner to pay sum of Rs.1,50,000/- to respondent;*
- (v) Order directing petitioner to pay sum of Rs.6,00,127.10/- towards compensation for non-payment of maintenance in terms of order of Court at Salzburg Austria dated 29.05.2020;*
- (vi) Order directing petitioner to pay compensation of Rs.2 crores for mental and physical torture;*
- (vii) Order directing maintaining custody of child with respondent and restraining petitioner from taking forcible custody.*

3. It is contention of respondent that she had married with petitioner in Denmark, Europe. Out of matrimonial relationship, Master Koan is born on 19.02.2015. He is in custody of respondent. During matrimonial relationship, petitioner used to assault her, break things around house, endanger child etc.. In month of July 2018 on account of violent attack by petitioner, she was constrained to call police. On 29.05.2020, an agreement of consensual divorce was signed by her. Eventually, decree dated 29.05.2020 was passed by Court at Salzburg, Austria. An agreement governing consequences of divorce was signed,

by which primary custody of child was given to her with access to petitioner every other Saturday and during holidays. The petitioner was put under obligation to pay sum of EUR 320 per month as child support for minor Koan prior to 5th day of every month and further obligation to pay sum of EUR 300 per month towards spousal support until son Koan reached age of 10.

4. Around December 2020 respondent moved to India which is her place of origin as maintenance amount determined in terms of order dated 29.05.2020 was insufficient to meet expenses in Europe. The petitioner failed to pay amount as ordered by Austrian Court, but seeks to exert his right qua child. He was never regular as far as his visitation, particularly as per schedule fixed under order. The petitioner filed an Execution Application before Principal District Judge at Panjim, Goa alleging that respondent left Europe in clandestine manner without giving information to petitioner although petitioner himself remained absent for birth days of child, falsely alleged respondent to have blocked his access to child.

5. In year 2021 child was put in Goa European School after having consultation with petitioner. The petitioner had been visiting Goa and temporarily residing in Goa and suddenly disappeared for period of about 9 months and ceased all contacts with respondent and child. He blocked maintenance. Thereafter, he arrived in Goa and started

harassing and threatening her. He used to change his addresses every month. She obliged him, out of courtesy and on humanitarian grounds, and permitted him to reside with her in shared household for brief period, in year 2022. However, there was no resumption of any physical or mental relationship between her and petitioner during period of such cohabitation. By end of year 2022, she refused to accommodate petitioner any further. The petitioner threatened her that he would take child to Europe and would not return. On 05.04.2024, while she was waiting at school bus stop, petitioner arrived on scene and created big ruckus by shouting and abusing in presence of minor and other people waiting at bus stop. On 07.04.2024, she reported incident to police.

6. In month of June 2024, she received notice of Application No.57/2024 filed by petitioner seeking execution of decree passed by Austrian Court. From June 2024 he completely stopped depositing maintenance. He owes her 6638 Euros upto July 2024. The petitioner likely to stop maintenance completely in year 2025 when child turns 10. The cause of action to file complaint under DV Act, 2005 arose when petitioner harassed, assaulted and humiliated respondent after marriage and coerced her to sign Agreement of Consensual Divorce and defaulted in paying maintenance as ordered by Austrian Court and then filed Execution Proceeding 57/2024 before Principal District Judge, Panaji.

7. Ms. Parul Vedak, learned Advocate appearing for petitioner would submit that parties residing separately since 2018 i.e. two years prior to mutual consent divorce decree. On 29.05.2020, Austrian Court passed decree for divorce by mutual consent, which includes agreement governing consequences of divorce. In December 2020, respondent shifted to India from Austria alongwith minor son and relocated herself to Goa since 2021. The petitioner filed Application No.57/2024 for execution of decree. The present DV complaint is filed by way of counter blast to Execution Proceeding. The respondent has accepted consent decree, received all benefits. Under terms of decree, parties have specifically agreed to withdraw all claims made against each other including police reports. She has received maintenance until 2025 and enjoyed benefits of consent terms without objection thereto, at the same time raising allegations of coercive consent. She has never raised any challenge to consent decree before Competent Court of law. Parties continues to be governed by mutual consent decree passed by Austrian Court. Eventually, there is no domestic relationship between parties.

8. The allegations made in complaint pertains to incident prior to mutual consent decree, wherein all such grievances were fully settled. Parties have never been in domestic relationship for over 9 years, which is necessary under DV Act, 2005. The respondent has no locus to file

complaint for relief sought under DV Act, 2005. In support of her contentions, she relies upon following judgments:

1. ***Reji Baby Vs. Subi Mary & Ors.***¹
2. ***Adil & Ors. Vs. State and Anr.***²
3. ***Inderjit Singh Grewal Vs. State of Punjab & Anr.***³
4. ***X Vs. Y***⁴
5. ***D. Sudheer Vs. Anusha R. Nair***⁵
6. ***Aditya Nigam & Anr. Vs. State (NCT of Delhi) & Anr.***⁶

9. Per contra, Mr. Aadarsh Kothari, learned Advocate appearing for respondent no.2 would submit that respondent has suffered domestic violence at the hands of petitioner in Austria as well as in Goa. Therefore, she filed complaint application under Section 12 of DV Act, 2005 before Judicial Magistrate First Class at Goa. The petitioner with intention to defeat custodial right of respondent with whom child has been assimilated filed Execution Proceeding before District Court. The petitioner and respondent shared domestic relationship not only in Austria, but also in Goa. The various instances of domestic violence have been specified in complaint even after divorce proceeding. By inviting attention of this Court to definition of Domestic Violence, particularly economic abuse, he submits that deprivation of all or any

1 2026 INSC 918.
2 2010:DHC:4656.
3 (2011) 12 SCC 588
4 2021 All.M.R.(Cri) 3402
5 2025 KER 1842.
6 2026 SCC OnLine Del 106

economic or financial resources to which aggrieved person is entitled under any law or custom whether payable under order of Court or otherwise would constitute Domestic Violence. He would submit that petitioner indulged in economic abuse rendering cause of action to file complaint under DV Act. In support of contentions, he relies following judgments:

1. *Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori*⁷.
2. *Krishna Bhattacharjee Vs. Sarathi Choudhury*⁸.
3. *Lalita Toppo Vs. State of Jharkhand and Another*⁹.
4. *Prabha Tyagi Vs. Kamlesh Devi*¹⁰.
5. *Aradhana Walkade Vs. Chandrashekar Vaidya & Anr.*¹¹.
6. *Prabir Kumar Ghosh and others Vs. Jharna Ghosh and another*¹².
7. *Puneet Rastogi Vs. State of U.P. Thru. Prin. Secy. Home Lko. And Antoher*¹³.
8. *Ramachandra Warrior Vs. Jayasree and Another*¹⁴.
9. *Vinay P. D. Vs. Conica Shambaya*¹⁵.
10. Having considered submissions advanced by learned Advocates appearing for respective parties and on perusal of record tendered into service, it can be observed that petitioner and respondent had married in

⁷ (2014) 10 SCC 736.

⁸ (2016) 2 SCC 705.

⁹ (2019) 13 SCC 796.

¹⁰ (2022) 8 SCC 90.

¹¹ 2014 SCC OnLine Bom 5326.

¹² 2015 SCC OnLine Cal 7149.

¹³ 2026 LiveLaw (AB) 373.

¹⁴ 2021 SCC OnLine Ker 1444.

¹⁵ 2020 SCC OnLine Kar 1577.

year 2015. Master Koan born on 15.02.2015 out of matrimonial relationship. The matrimonial ties have been dissolved by decree of divorce by mutual consent passed by Austrian Court on 29.05.2020. The decree contains agreement governing consequences of divorce. The relevant terms of agreement pertaining to share custody of minor son, contact rights, child support payment and spousal support payment, which reads thus:

Agreement governing the consequences of the divorce

I. Parental custody

Both parents have shared custody of their minor son, Koan Lustig Kelaiya, date of birth: 19 February 2015.

II. Primary Residence

Koan Lustig Kelaiya's (dob 19 February 2015) primary residence will be with his mother who will also principally care for him.

III. Contact Right

As at 30 May 2020, the child's father is entitled to pick up his son Koan from the mother's home every other Saturday at 10 am. and to bring him back to his mother on Sunday at 4 p.m.

Furthermore, as of 2 June 2020, the father may pick up his son every Tuesday and Thursday around 2 p.m. from kindergarten and return him to his mother at 6.30 p.m.

Holidays:

First Petitioner may take his son Koan on a holiday for one week in August 2020. First Petitioner is generally entitled to see his son for 2 weeks during the summer holidays.

Koan will spend the entire Christmas holidays 2020 with Second Petitioner in India. First Petitioner will be there at the same time and will be allowed to see Koan for 3 days during those 2 weeks. In 2021, Koan will spend the entire Christmas holidays 2021 with First Petitioner, and Second Petitioner will be allowed to see him for 3 days.

IV. Child Support Payments

First Petitioner, Momme Karl Jakob Lustig (dob 8 September 1979) undertakes to pay a sum of EUR 320.00 per month as child support for the minor Koan Kelaiya (dob 19 February 2015), payment to be made on pain of execution on or prior to

the 5th day of a month, at the latest, to Second Petitioner Nidhi Kelaiya, the child's mother.

It is noted that this child support agreement is based on a monthly average net income of currently EUR 2,000.00 and on the fact that Momme Karl Jakob Lustig does not have make support payments for any other children.

V. Spousal Support Payments

First Petitioner undertakes vis-à-vis Second Petitioner to pay a sum of EUR 300.00 per month as of June 2020 as spousal support (fixed support payments) until his son Koan has reached the age of 10. An application of the change of circumstances clause is ruled out.

Monme Karl Jakob Lustig (dob 8 September 1979) and Nidhi Kelaiya (dob 9 September 1978) mutually waive any support payments whatsoever, past and future, as of the date on which their son Koan reaches the age of 10, in case of distress and hardship through their own fault or no fault of their own, changes in circumstances or changes in legislation. Furthermore, they explicitly waive the application of the change-of-circumstances clause and declare that they do not wish to derive any entitlements to spousal support from any responsibility for the divorce which was intentionally not examined.

VI. Couple's Apartment

First Petitioner is the sole tenant of the former couple's apartment at Hoglstrasse 11 Top 3 in 5020 Salzburg. The lease will be terminated as of 31 August 2020, and Second Petitioner and the couple's son Koan will live, and First Petitioner explicitly and irrevocably agrees that they live, there until 15 August 2020, at the latest. First Petitioner undertakes to be solely responsible for the monthly rental payments, including ancillary costs, which amount to approximately EUR 1,300.00. He explicitly waives any right to assert any claims whatsoever from the lease or the actual use of the apartment by Second Petitioner. Second Petitioner undertakes to vacate and hand over the apartment to First Petitioner, free and clear of any chattel, until 15 August 2020 at the latest.

IX. Compensation

First Petitioner undertakes to pay a compensation of EUR 3,000,00, payment to be made on pain of execution within 14 days of the date on which this order has become final to Second Petitioner's lawyer, Dr. Christian Schubert (account number IBAN AT84 4501 0000 0320 7271).

X. General Clause

This settlement resolves and settles all reciprocal claims whatsoever, including but not limited to the claims in the proceedings 43 C 13/20 w pending before Bezirksgericht Salzburg (District Court Salzburg) (Plaintiff: Second Petitioner; Defendant: First Petitioner). Second Petitioner undertakes to withdraw the complaint and to waive any claims thereunder after compliance with the provisions of Section IX. of this Agreement.

11. Plain reading of aforesaid terms depicts that both parents have agreed for shared custody of their minor son keeping primary residence with mother. The petitioner was given right to pick up son from mothers' home every other Saturday at 10.00 am till Sunday at 4.00 pm and during summer holidays he was given right to see his son for two weeks. The visitation rights were given during Christmas holidays. The petitioner was under obligation to pay sum of 320 euros per month as child support by 5th day of every month to respondent. The petitioner was to pay spousal support payment of 300 euros per month until son Koan reached age of 10. From date on which son Koan reaches age of 10 years, respondent mutually waived support payment, so also explicitly waive application of change of circumstances clause and declared that they do not wish to derive any entitlements to spousal support from any responsibility for divorce. The petitioner had agreed to pay compensation of EUR 3000. The general clause specifically states that settlement resolves and settles all reciprocal claims. The respondent agreed to withdraw complaint and waive claims thereunder after receiving compensation of EUR 3000.

12. The prayer clause in present complaint would suggest that respondent raised her claim under DV Act based on aforesaid agreement while accepting divorce by mutual consent, it can be observed that most of part of complaint relates to incidents prior to passing of decree by mutual consent. Rest of claims are relating to either default in payment of maintenance or regarding dispute over custody of child between petitioner and respondent. In case of ***Prabha Tyagi*** (supra), Supreme Court in paragraph no.59.2(ii) and (iv) observed as under:

*“(ii) In event of a divorce, marriage would be no longer be subsisting, but if a woman (wife) is subjected to any domestic violence either during marriage or even subsequent to divorce decree being passed **but relatable to period of domestic relationship**, provisions of this D.V. Act would come to rescue of such divorced woman.*

*(iv) Therefore, even when the marital ties cease and there is no subsisting domestic relationship between aggrieved woman and respondent against whom relief is claimed but **acts of domestic violence are related to period of domestic relationship**, even in such circumstances, aggrieved woman who was subjected to domestic violence has remedies under the D.V. Act.”*

13. In present case looking to averments in complaint and prayers incorporated therein suggests that respondent is not seeking relief based on any incident that occurred during subsistence of marriage with petitioner. The consensus agreement recorded at the time of divorce decree clearly suggests that respondent has waived off and settled all reciprocal claims and gave specific undertaking to withdraw complaints after receiving compensation of EUR 3000, which she has already received. In that view of matter, respondent is estopped from raising

any claim based on allegations of domestic violence during subsistence of her marriage. Pertinently, from 29.05.2020 i.e. date of divorce no complaint regarding domestic violence was made till filing of present complaint in hand in year 2024 and particularly it has been filed on service of notice of execution of divorce decree at the instance of petitioner.

14. Pertinently, there is sufficient material to demonstrate that respondent had received all benefits under decree, without any demur, till date of filing of complaint and claiming various reliefs by alleging incidents of domestic violence, despite fact that domestic relationship between parties had been severed by mutual consent through divorce. The petitioner cannot invoke jurisdiction of Magistrate under DV Act, 2005 for execution of claims under decree. Pertinently, respondent had right to receive spousal support till Master Koan reaches age of 10 years. Prima facie, it can be observed that she has already received amount as per her entitlement. Of course, in case of any default it would be open for her to seek execution of decree. However, in any case, proceeding under DV Act, 2005 cannot be permitted to be utilized to coerce divorced husband to bow down and fulfill demands which does not emerge from acts of domestic violence.

15. In present case, prayers in complaint clearly demonstrates that petitioner is seeking reliefs in relation to custody of child, which are

inconsistent to the agreed terms under consensual decree. Apart from that, she is seeking recovery of amount spent by her towards rent for her stay in State of Goa, for which there is no basis. The claim for compensation of Rs.2 crores for mental and physical torture due to non-payment of maintenance in terms of divorce order etc. would be beyond jurisdiction of Magistrate under DV Act, 2005. In that view of matter, apparently complaint appears to be counter blast to Execution Proceeding instituted by petitioner husband and in no way reliefs claimed in complaint would fall within meaning of Domestic Violence particularly in absence of subsisting domestic relationship between parties. In result continuation of proceeding in complaint would amount to abuse of process of law.

16. In result, Writ Petition is allowed in terms of prayer Clause (A).

(S. G. CHAPALGAONKAR)
JUDGE