

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

Criminal Writ Petition No.46 of 2015

Yashwant S/o. Dhondiba Shinde
And Another.

.. Petitioners.

Versus

The State of Maharashtra
And Another.

.. Respondents.

Shri. N.B. Narwade, Advocate, for petitioners.

Smt. R.K. Ladda, Additional Public Prosecutor, for
respondent No.1.

Shri. R.R. Karpe, Advocate, for respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 23rd JUNE 2015

ORDER:

1) The petition is filed to challenge the order made by the learned Judicial Magistrate, First Class, Newasa on Exhibit 15 in Criminal Misc. Application No.313/2013. The application filed by present petitioners for dismissing the proceeding without recording evidence is rejected by the learned Judicial Magistrate First Class. Both sides are heard.

2) Criminal Misc. Application No.313/2013 is filed by present No.2, wife under the provisions of the Protection of Women from Domestic Violence Act, 2005. She has claimed that the husband and the son are not providing anything for her maintenance. It is her case that she is driven out of matrimonial house and she is not able to maintain herself.

3) In the application at Exhibit 15 the petitioners have contended that since 1987 court cases are pending between present respondent No.2 and the petitioner No.1 and she is not cohabiting with the husband since the year 1991 and so the application under this special Act is not tenable.

4) It is not disputed that the marriage took place about 35 years prior to the date of filing of the proceeding. It is the case of the wife that there was ill treatment to her. In the past also she was driven out of matrimonial house but the dispute was settled. Maintenance was granted in Criminal Misc. Application No.167/1987 by the Judicial Magistrate but she returned

to the matrimonial house in 1991. It is her case that after that she gave birth to two issues but after that she as again driven out of matrimonial house. It is her case that she filed Criminal Misc. Application No.344/2006 for maintenance but as the steps were not taken it was dismissed by the Court. It is her case that in view of these circumstances she was required to approach the Court.

5) The learned counsel for the petitioners has placed reliance on a judgment of this Court and some reported cases which are as under :-

- (1) **Criminal Application No.160/2011 (Sejal Dharmesh Ved v. the State of Maharashtra) (Principal Bench) decided on 7th March 2013;**
- (2) **2014 All MR (Cri) 2826 (Vikrant Sudhakar Ambhore v. Varsha Vikrant Ambhore);**
- (3) **2010 ALL MR (Cri) 1386 (Kishor Shrirampant Kale v. Shalini Kishor Kale);**
- (4) **2010 ALL MR (Cri) 2259 (Jayesh Uttamrao Khairnar v. State of Maharashtra);**
- (5) **2013 ALL MR (Cri) 1799 (Pushpa Jaiprakash Ogale v. State of Maharashtra).**

6) On the other hand learned counsel for the respondent - wife has placed reliance on a case reported as **2012(1) Mh.L.J. 412 (Karimkhan v. State of Maharashtra).**

7) The main contention of the petitioners is that for many years there was no contact between petitioner No.1 and the respondent wife and so she is not entitled to get any relief under the provisions of the aforesaid Act. In this regard a case of the Supreme Court reported as **(2014) 3 SCC 712 (Saraswathy v. Babu)** can be referred. The relevant observations are in paragraphs 12 to 14 and they are as under :-

"**12.** Section 2(g) of PWD Act, 2005 states that "domestic violence" has the same meaning assigned to it in Section 3 of PWD Act, 2005. Section 3 is the definition of domestic violence. Clause (iv) of Section 3 relates to "economic abuse" which includes prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household as evidence from clause (c) of Section 3 (iv).

13. In the present case, in view of the fact that even after the order passed by the Subordinate Judge the respondent-husband has not allowed the appellant-wife to reside in the shared household matrimonial house, we hold that there is a continuance of domestic violence committed by the respondent-husband against the appellant-wife. In view of the such continued domestic violence, it is not necessary for the courts below to decide whether the domestic violence is committed prior to the coming into force of the Protection of Women from Domestic Violence Act, 2005 and whether such act falls within the definition of the term Domestic Violence as defined under Section 3 of the PWD Act, 2005.

14. The other issue that whether the conduct of the parties even prior to the commencement of the PWD Act, 2005 could be taken into consideration while passing an order under Sections 18, 19 and 20 fell for consideration before this Court in *V.D. Bhanot v. Savita Bhanot (2012) 3 SCC 183*. In the said case, this Court held as follows :

"12. We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. In our view, the

Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005."

8) The learned Judicial Magistrate has rejected the application in the present matter as no evidence at all is given by the parties. The Magistrate has observed that the parties need to be given opportunity to lead evidence to substantiate their contentions. This order cannot be called as incorrect and the Magistrate was acting within his jurisdiction. Disputed facts are there and further there are the observations of the Hon'ble Apex Court of the aforesaid nature. It is not possible to interfere in the order made by the learned Judicial Magistrate.

9) The petition stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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