

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

Criminal Writ Petition No.804 of 2014

- 1) Vrushiket S/o Sadashiv Shinde,
Age 76 years,
Occupation: Agriculture,
R/o Ghatangri,
Taluka & District Osmanabad.
- 2) Sunil s/o Vrushiket Shinde,
Age 41 years,
Occupation: Agriculture,
R/o Ghatangri,
Taluka & District Osmanabad.
- 3) Achyut S/o Vrushiket Shinde,
Age 39 years,
Occupation: Agriculture,
R/o Ghatangri,
Taluka & District Osmanabad. .. **Petitioners.**

Versus

- 1) Pamabai W/o Vrushiket Shinde,
Age 73 years,
Occupation : Household,
R/o Ghatangri,
Taluka & District Osmanabad
C/o Advocate S.P. Harale,
Umbare Kotha,
Near D. Pharmacy College,
Osmanabad.
- 2) Sakhubai W/o Vrushiket Shinde,
Age 68 years,
Occupation : Household,
R/o Ghatangri,
Taluka & District Osmanabad. .. **Respondents.**

Shri. S.S. Choudhari, Advocate, for petitioners.

Shri. S.P. Harale, Advocate, for respondent No.1.

Shri. P.N. Mule, Additional Public Prosecutor, for State.

CORAM: T.V. NALAWADE, J.

DATE : 17th JUNE 2015

JUDGMENT:

1) The petition is filed to challenge the judgment and order of Criminal Appeal No.55 of 2013 which was pending in the Court of the Sessions Judge Osmanabad and also the decision of Criminal Misc. Application No.429/2010 which was challenged in Criminal Appeal No.55/2013. The learned Chief Judicial Magistrate has granted relief like payment of maintenance of Rs.800/- per month, compensation of Rs.5000/- and Rs.400/- per month towards rent in favour of the present respondent No.1 and this order is confirmed in the appeal. Both the sides are heard.

2) It is the case of the original applicant Smt. Pamabai that her marriage with respondent Vrushiket took place 49 years prior to the date of filing the

proceeding. It is her case that for about one year there was no dispute but after that respondent No.1 started harassing her on petty counts and she was virtually starved and he was not providing the necessary items and articles to her. It is contended that after one year of the marriage she was driven out of the house and she was staying with her mother for some time. It is contended that her parents are residents of the same village. It is contended that the matter was reconciled and then she gave birth to a daughter after 4 years of the marriage.

3) It is the case of the original applicant that after birth of the daughter, respondent No.1 married second wife. Respondent No.2 is the second wife of respondent No.1 and respondent Nos.3 and 4 are the sons born to respondent No.2 from respondent No.1. It is her case that after the second marriage more ill-treatment was given to her and ultimately she was again driven out of matrimonial house. It is her case that she then started living in a dilapidated room which was owned by respondent No.1 and his brother. It is her case that she some-how managed to solemnize marriage of her

daughter.

4) It is the case of the original applicant that for more than 22 years the husband has not provided anything for her maintenance. It is her case that she had filed Criminal Misc. Application No.132/2001 under section 125 of the Code of Criminal Procedure for maintenance and the Judicial Magistrate had granted maintenance at the rate of Rs.1000/- per month. It is her case that when she filed proceeding for recovery of arrears of amount, force was used and fraud was played to compromise the case.

5) It is the case of the original applicant that she has filed a suit also for getting share in the property as nothing is provided to her by the husband for her maintenance. It is her case that she some how is pulling herself and she is living at the mercy of others. It is her case that respondent No.1 is still harassing her and he visits her house and gives beating to her. It is her case that the second wife and the issues from the second wife are also harassing her. It is her case that she has become

old and she is not able to do any work and she is not able to maintain herself.

6) It is the case of the original applicant that respondents own 37 acres of agricultural land and they are taking crops like sugarcane, Jowar, Toor, wheat and their annual income is more than Rs. 7 lakh. In the proceeding file under the provisions of sections 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 (for short "the D.V. Act") she had prayed for aforesaid reliefs and the reliefs to the extent mentioned are granted. Both of them challenged the decision of the Judicial Magistrate but both the appeals came to be dismissed. The original applicant has not challenged the decision of the Sessions Court on the point of quantum but the original respondents, husband and his two sons have challenged the decision of the Sessions Court.

7) The submissions made and the record show that relationship is not disputed by respondent No.1 Vrushiket. It was submitted that after so many years,

more than 22 years, the wife started claiming maintenance and as for such long period they were living separate it cannot be said that there were any domestic relations as required by the provisions of the D.V. Act. It appears that there is not much dispute over the quantum as meagre amount of Rs.800/- per month is granted and also meagre amount is granted towards rent. It is also not disputed that the original applicant has no source of income and she has become old.

8) Learned counsel for the petitioner placed reliance on a reported case **2014 All MR (Cri) 636** Bombay High Court (**Sejal Dharmesh Ved v. the State of Maharashtra**). In this case this Court refused similar reliefs to a lady who was living in most of the time in United States when she had married with the opponent in 1999 and she had come just one year prior to the date of proceeding to India, in 2009. In view of the facts of that case, this Court held that there was no physical relationship, which had come to an end long back and as the proceeding was not filed within reasonable time to show that the relations would give her the cause of action

to file proceeding under the D.V. Act, the relief was refused.

9) As against this reported case, learned counsel for the original applicant placed reliance on a case reported as **(2014) 3 SCC 712 (Saraswathy v. Babu)**. The Apex Court has discussed the relevant terms and requirements for taking benefit of the provisions of the D.V. Act at paragraph 12 to 14. The observations 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 evident 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."

10) It cannot be disputed that in view of the provisions of the D.V. Act, the wife is not expected to show that just before the filing of the proceeding she was subjected to domestic violence. This Court has observed in the case cited supra that proceeding needs to be filed within reasonable time from the cause of action but in view of the other reliefs which are made available and the observations made by the Apex Court particularly with regard to economic abuse which finds mention in section 3, the definition of "domestic violence", it can be said that the original applicant from the present proceeding has made out her case. She has turned old, she has no source of income but the husband is avoiding to provide anything for her maintenance and he is having sufficient property. It appears that he was Sarpanch of the village also.

11) One more argument was advanced by the learned counsel for the petitioner that the matter was compromised in the past and right of maintenance was given up by the original applicant. This submission is not acceptable as the said so called compromise was

challenged by filing suit and relief of declaration is given in respect of that so called compromise by the Civil Court. In any case, the original applicant of the present case needs support at this stage. The respondents, husband and the issues of the husband are having property but they are not giving support of any kind and they have subjected the original applicant to economic abuse. In view of these circumstances this Court holds that it is not possible to interfere in the orders and the decision given by the Judicial Magistrate and the Sessions Court.

12) In the result, the petition stands dismissed. Rule is discharged with no order as to costs.

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

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