

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

CRIMINAL WRIT PETITION NO. 568 OF 2014

- 1] Karishma w/o Ravindra Kumavat,
age 31 years, occ. Housewife,
R/o 112/A1, Ambikaprasad,
Prabhat Road, Lane No. 14, Pune,
- 2] Raviriya d/o Ravindra Kumavat,
u/g of her mother,
Karishma w/o Ravindra Kumavat,
age 31 years, occ. Housewife,
r/o as above
- ...Petitioners

VERSUS

Ravindra s/o Eknath Kumavat,
age 40 years, occ. Business,
R/o C-1/7, Sara Pride,
Ranjit Nagar, Kalda Corner,
Osmanpura, Aurangabad

...Respondent

.....

Shri S.G.Dodya, advocate for Petitioners
Shri V.D.Salune, advocate h/f
Shri D.B.Thoke, advocate for sole respondent

.....

WITH

CRIMINAL WRIT PETITION NO. 606 OF 2014

Ravindra s/o Eknath Kumavat,
age 46 years, occ. contractor,
R/o C-1-7, Sara Pride,
Ranjit Nagar, Near Chetna Nagar,
Aurangabad

...Petitioner

VERSUS

- 1] Karishma w/o Ravindra Kumavat,
age 33 years, occ. Housewife,
R/o 112A, Ambika Prasad,
Prabhat Road, Pune,

2] Raviriya d/o Ravindra Kumavat,
age 9 years, Occ. Student
u/g of her mother,
Karishma w/o Ravindra Kumavat,

3] The State of Maharashtra ...Respondents

.....
Shri V.D.Salune, advocate h/f
Shri D.B.Thoke, advocate for Petitioner
Shri S.G.Dodya, advocate for respondent nos. 1 and 2
Shri D.V.Tele, A.P.P. for respondent no.3
.....

CORAM : N.W.SAMBRE, J.

DATED : 13th JUNE, 2016

ORAL JUDGMENT : -

Since in both these Petitions, the order questioned is the same and concerns the same parties, they are heard together and are being decided by this common judgment.

2. The order passed by the learned Additional Sessions Judge, Aurangabad, in exercise of powers under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (for short "D.V.Act") thereby modifying the order passed by the learned Magistrate, in

exercise of powers pursuant to provisions of Section 12 of the said Act, enhancing benefits to be given to the wife, is questioned herein by the husband, whereas wife has questioned the same order for inadequate monetary relief.

3. The facts, as are necessary for the decision of the present petitions, are as under : -

Ravindra, Petitioner in Criminal Writ Petition No. 606 of 2014, claims to have married to one Jayshree on or about 12.2.1993, out of which relationship, he was blessed with two daughters and a son. It is claimed that respondent-Karishma got acquainted with Ravindra and after their love relationship, got married on 14.2.2000 at Pune. It is claimed that Ravindra and Karishma thereafter resided together at various places viz., Chalisgaon, Aurangabad and Pune and on 8.9.2002 given birth

to daughter Raviriyā at Pune.

4. It is then claimed that, as the relationship between Ravindra and Karishma got soured, having regard to certain criminal acts on the part of Ravindra, a complaint by Karishma for offences punishable under Sections 498-A, 323, 504, 506, 494 r/w 34 of the Indian Penal Code came to be filed at Kothrud police station, Pune which then was registered as Regular Criminal Case No. 1931 of 2004 (State vs Ravindra). Ravindra thereafter, after a full fledged trial, it is informed, had been convicted by the learned Judicial Magistrate, First Class, Pune and was ordered to suffer simple imprisonment for three years and to pay fine of Rs.2,000/-, in default to suffer simple imprisonment for two months, for the offence punishable under Section 498-A of the Indian Penal Code. He, however, was acquitted of the

charge for the offences punishable under Sections 323, 504, 506, 494 r/w 34 of the Indian Penal Code. It is then claimed that the said conviction was questioned in Criminal Appeal by Ravindra.

5. It is then claimed that Ravindra made Karishna to understand that he cares for her and so as to ensure her financial security, entered into an agreement on 2.9.2005 for purchase of a truck in her name after availing finance from Tata Finance Company. It is claimed that loan was obtained from Tata Finance Company in the name of Karishma Dhananjay Satarkar i.e. her maiden name.

6. Pursuant to the provisions of Section 30 of the Hindu Marriage Act, Ravindra filed proceedings for divorce from first wife Jayshree on 8.12.2005 in the Family Court,

Aurangabad and, it is informed, the Court is said to have granted maintenance.

7. Writ Petition, being Writ Petition No. 4809 of 2006, at the behest of Ravindra, questioning the order of the Family Court, granting maintenance of Rs.20,000/- per month, being Writ Petition No. 4809 of 2006, at the behest of Ravindra, came to be allowed and amount was reduced to Rs.10,000/- per month.

8. A divorce petition preferred by the present petitioner Ravindra, being Petition No. A-353/2005, was informed to have been dismissed for want of prosecution subsequently.

9. An important issue, of which this Court is required to take note of is Ravindra, a civil contractor was carrying out construction and other developmental activities, pursuant to

registration certificate issued by the State Government.

10. It is claimed that the proceedings under Section 138 of the Negotiable Instruments Act were initiated against Karishma through power of attorney holder of Ravindra, as cheques which were issued by Karishma for purchase of truck were dishonoured.

11. Regular Civil Suit No. 52 of 2007 came to be instituted by Karishma against Ravindra on 18.1.2007 for perpetual injunction, rectification of the agreement for purchase of truck and perpetual injunction from presenting the cheques.

12. In the above background, Karishma, who is also custodian of daughter Raviriya, who is taking education in an English School at Pune,

filed Miscellaneous Application No. 215 of 2008, purporting to be under Section 12 of the D.V.Act.

13. After Ravindra was put to notice and heard on merits, the learned Magistrate, vide order, dated 2.12.2010 partly allowed the application of Karishma, directing payment of monthly maintenance of Rs.4,000/- and Rs.3,000/-, respectively to Karishma and daughter Raviriya. The said order was questioned by both, Ravindra and Karishma, before the learned Sessions Judge, in appeal under Section 29 of the D.V. Act. The appeal preferred by Ravindra, being Appeal No. 267 of 2010, came to be dismissed; whereas appeal preferred by Karishma came to be allowed, thereby enhancing maintenance to Rs.20,000/- and Rs.10,000/- to Karishma and daughter Raviriya, respectively, vide order dated

6.3.2014.

14. Being aggrieved, present Petitions by both the parties.

15. Heard respective counsel at length.

16. Petitioner Ravindra has come out with a case that there was no marriage with Karishma and also denied paternity of daughter Raviriyaa. He would try to rely upon his earlier marriage with Jayshree on 12.2.1993 and claim that he has already three children from Jayshree. An alternate submission is made that no rituals were followed in the marriage with Karishma. It is further claimed that marriage with Karishma, if any, was at her risk and peril, as she was well aware of earlier marriage of Ravindra with Jayshree and the children born out of the said marriage. It is further

claimed, at the most, relations between him and Karishma could be termed as "live in relationship", and as such provisions of the D.V.Act are not available.

17. Reliance is placed on behalf of petitioner Ravindra on the judgments of the Apex Court in the matter of **Indra Sarma vs V.K.V.Sarma**, reported in 2014 (1) Bom.C.R. (Cri.) 496 and **Deepak @ Gajanan Ramrao Kanegaonkar vs State of Maharashtra and another**, reported in 2015 (4) Bom.C.R. (Cri.) 406.

18. In addition, it is submitted that, there is an independent source of income to Karishma i.e. operation of truck and she being able bodied lady having proper education up to post graduate level, can earn independently. It is also claimed that since 2004 parties are

residing separately. Learned counsel then would urge that in absence of any statutory right in favour of Karishma, no solace can be considered in her favour. He would then submit that the income of Ravindra from business of Government contract is not proved. It is also claimed that Karishma, while claiming benefits under Section 12 of the D.V. Act, has not established her living standard, and as such, the amount, as ordered, is not justifiable.

19. While responding to the above claim, it is claimed by the learned counsel for Karishma and daughter Raviriyaa that Jayshree herself has come out with a case that Ravindra has married to Karishma. He would then rely upon certain oral and documentary evidence in the other proceedings, such as cross-examination in the proceedings initiated for divorce, his prosecution in S.C.C. No. 5733 of 2004 for an

offence punishable under Sections 309, 427 of the Indian Penal Code.

20. Learned counsel then submits that the fact that there was first marriage of Ravindra with Jayshree and said marriage was allegedly well within the knowledge of Karishma, is not proved by Ravindra, as no such presumption could be drawn against Karishma in the absence of evidence to that effect. It is claimed that Ravindra failed to discharge his burden. Reliance is also tried to be placed upon the order passed by the learned Magistrate at Pune in Regular Criminal Case No. 1931 of 2004, convicting Ravindra for the offence punishable under Section 498-A of the Indian Penal Code.

21. The proceedings under Section 138 of the Negotiable Instruments Act by Ravindra against Karishma, and the proceedings being

Regular Civil Suit No. 52 of 2007 for perpetual injunction and declaration are sought to be relied upon so as to demonstrate that Ravindra, with an intention to create evidence against Karishma of her independent income, then to entangle Karishma in the business by executing contract, in a calculated manner, has tried to victimize her. It is claimed that husband Ravindra has admitted that he had received amount of Rs.6,11,000/- towards price of the truck.

22. In the above referred background, a claim is made by Karishma that the petition preferred by husband be dismissed and enhancement be granted to the extent of Rs.50,000/-, as prayed in the application under the D.V.Act.

23. With the assistance of the respective

learned counsel, I have perused the entire record. What could be gathered from the original record is, Ravindra filed proceedings bearing Petition No. A-353 of 2005 on or about 8.12.2005 against his first wife Jayshree under Section 13(1)(ia) of the Hindu Marriage Act, for divorce.

24. Another proceedings, being Regular Criminal Case No. 1931 of 2004 were initiated by Karishma against Ravindra on or about 7.3.2004 alleging that he had suppressed his first marriage in the proceedings which were initiated for offence punishable under Section 498-A along with other Sections of the Indian Penal Code. The learned Magistrate, while dealing with the points which were framed for deciding the issue in the said proceedings, has noted that it is brought on record, in the evidence of one Jayram Ingle PW 4, a LIC agent

at Aurangabad, that LIC policy was drawn by Ravindra in which Karishma was shown to be his wife.

25. The evidence of Lalitkumar Achliya, a neighbour of both Ravindra and Karishma, in Miscellaneous Application NO. 215 of 2008, speaks of the relationship between Ravindra and Karishma, as that of husband and wife. It is also required to be noted that wife Jayshree, while defending divorce proceedings, has come out with the specific case of second marriage of Ravindra.

26. Daughter Raviriyia was born on 8.9.2002. Her birth was registered on 19.9.2002 with Pune Municipal Corporation, in which Ravindra was recorded to be her father, though said certificate was sought to be assailed by him.

27. In proceedings No. S.C.C. No. 5733 of

2004, Ravindra has claimed to have admitted about his physical relationship with Karishma.

28. In the evidence, of Karishma recorded in the present proceedings, she has stated about she being driven out of matrimonial house.

29. It is then to be noted that Ravindra has come out with a case that Karishma was well within the knowledge about his first marriage with Jayshree and also about having children out of the same. Though the evidence of the parents of Karishma speaks of their knowledge about the marriage of Ravindra with Jayshree, however, inference that Karishma was also having knowledge about the same, cannot be drawn, because marriage of Karishma with Ravindra was not with the consent or within the knowledge of her parents. Once Ravindra has

come out with the case that he had already married with Jayshree, entire burden lies on him to prove that he was married to Jayshree and such fact was well within the knowledge of Karishma, however, the same was not proved in the present case.

30. Initiation of Petition No. A-353 of 2005 against Jayshree for divorce and questioning payment of Rs.10,000/- towards maintenance to her, speaks of intention of Ravindra to divorce Jayshree and to stay with Karishma. It is also to be noted that in Regular Criminal Case No. 5733 of 2004, Ravindra, in clear terms, has stated name of Karishma as "Karishma Ravindra Kumawat".

31. As a consequence of above observations, what could be inferred is, Ravindra has failed to substantiate and prove that fact of his

marriage with Jayshree was within the knowledge of Karishma and still she chose to marry with him. The claim of Ravindra that proceedings under the D.V. Act are not available is required to be rejected, particularly when he had already initiated proceedings for divorce against Jayshree, his alleged first wife.

32. The ground raised by Karishma as regards the earning capacity of Ravindra is required to be appreciated in the light of evidence of Ravindra. He has, in clear terms, admitted that he was a registered contractor with Irrigation Department, has executed works all over the Maharashtra State and was a tax payer. Adverse inference is required to be drawn as he has stated that he is not in a position to produce those papers, as such his income, as is pleaded, is required to be appreciated in the light of evidence and

pleadings brought on record by Karishma, particularly for determination of the entitlement of Karishma to maintenance and quantum of the same.

33. It is also required to be noted that the standard of living of Karishma, as is mentioned in the proceedings and the payment of amount of Rs.6,11,000/- towards the price of truck, are the issues which were not disputed by Ravindra. What could be inferred from the proceedings under Section 138 of the Negotiable Instruments Act and the intention of Ravindra to purchase a truck in the name of Karishma, as a calculated move, Ravindra tried to create liability so as to demonstrate purported independent source of income of Karishma by visualizing that he would be required to face maintenance proceedings. The business of transport engaged in by Karishma, as is claimed

by Ravindra is completely unbelievable story, as it is really difficult for a lady to manage transport business, particularly when she has no support either of the family members or husband Ravindra.

34. There is sufficient material on record to infer the relationship between Karishma and Ravindra to be that of husband and wife, such as, the photographs of marriage, the evidence of Lalitkumar PW 2, the date of birth certificate of Raviriyia, evidence of Vijay Sonawane PW 3 and school record in the name of Ravindra about him being father of Raviriyia.

35. Pursuant to the provisions of the Indian Evidence Act, particularly Section 112, which deals with birth during marriage, Section 114 i.e. presumption of existence of certain facts and the conviction of Ravindra for

offence under Section 498-A of the Indian Penal Code is sufficient indication to infer their relationship to be that of husband and wife.

36. As a consequence of above, availability of remedy of proceedings under the D.V.Act to Karishma is rightly inferred by the courts below in her favour.

37. So far as source of income of Ravindra, particularly about his registration as a contractor with Government is concerned, the business in the name of "Swati Constructions" working in projects having cost of Rs.25 crores and getting monthly income of about Ten Lakhs, agricultural income of Rs.20,00,000/- per annum from land at Chalisgaon, property worth Rs.25,00,000/- i.e. a bungalow at Chalisgaon, flats worth Rs.50 and 40 Lakhs, respectively at Pune and two flats at Aurangabad, is sufficient

enough to justify award of maintenance of Rs.20,000/- and Rs.10,000/- per month in favour of Karishma and daughter Raviriya. Standard of living of daughter Raviriya and wife Karishma, could be inferred from the fact that she is taking education in English Medium School. Maintenance awarded has to be in proportionate to the income of Ravindra, is required to be appreciated, apart from the other pleadings on record. It is the duty of the husband to maintain his wife and daughter in same status as they were before. Appropriate support can be drawn from the judgment of the Apex Court in the matter of **Bhuvan Mohan Singh vs Meena and others**, reported in **2014 AIR SCW 4201**. Para 14 of the said judgment reads thus : -

"14. The purpose of highlighting this aspect is that in the case at hand the proceeding before the Family Court was conducted without being alive to the objects and reasons of the Act and the spirit of the provisions under Section 125 of the Code. It is unfortunate that

the case continued for nine years before the Family Court. It has come to the notice of the Court that on certain occasions the Family Courts have been granting adjournments in a routine manner as a consequence of which both the parties suffer or, on certain occasions, the wife becomes the worst victim. When such a situation occurs, the purpose of the law gets totally atrophied. The Family Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. When we say this, we do not mean that the Family Courts should show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation. A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before it. It not only gives rise to more family problems but also gradually builds unthinkable and Everestine bitterness. It leads to the cold refrigeration of the hidden feelings, if still left. The delineation of the lis by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to emotional fragmentation and delay can feed it

to grow. We hope and trust that the Family Court Judges shall remain alert to this and decide the matters as expeditiously as possible keeping in view the objects and reasons of the Act and the scheme of various provisions pertaining to grant of maintenance, divorce, custody of child, property disputes, etc."

38. So far as reliance placed by the learned counsel for Ravindra on the judgments of **Indra Sarma vs V.K.V.Sarma** and other judgment in the matter of **Deepak @ Gajanan Ramrao Kanegaonkar vs State of Maharashtra & others** is concerned, in my opinion, once having established that Ravindra has failed to discharge his burden about existence of first marriage and such fact being well within the knowledge of Karishma, the birth school entries of daughter Raviriyaa, divorce proceedings with first wife Jayshree, it is difficult to hold that support from these judgments could be of any assistance to husband Ravindra.

39. So far as claim of applicant/petitioner Karishma and daughter Raviriya for enhancement is concerned, it is worth to observe that while awarding and enhancing the maintenance the Appellate Court has taken into account income of Ravindra, standard of living of Karishma and daughter Raviriya, as also expenses to be incurred by them.

Upon re-appreciation of the same, I hardly find any scope for interference in the quantum of maintenance awarded.

40. In the above background, in my opinion, the order of maintenance, as made by the learned Additional Sessions Judge, Aurangabad on 6.3.2014 does not call for any interference.

41. As such, both the Writ Petitions fail and are dismissed.

(N.W.SAMBRE, J.)

dbm/crwp568.14