

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

CRIMINAL WRIT PETITION NO. 721 OF 2014

Ritesh s/o Gorakhnath Jadhav,
Age: 27 years, Occ: Nil,
Residing at Plot No. B-12,
Sanjay Nagar, Baijipura,
Aurangabad-431 001,
through his mother and natural guardian
Mrs. Suman w/o Gorakhnath Jadhav,
age 49 years, Occ: Household,
residing at B-12, Sanjay Nagar,
Baijipura, Aurangabad-431 001. ...Petitioner

versus

1. Amrapali w/o Ritesh Jadhav,
Age: 24 years, Occ : Household,
Residing at C/o Mr. Ashok Pagare,
Near Bharati Provisions,
Nirali Bagh, Aurangabad 431 004.
2. The State of Maharashtra. ...Respondents

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Mr. Hemant Surve, Advocate for petitioner
Mr. K.B. Jadhav, Advocate for respondent No. 1
Mr. A.R. Kale, A.P.P. for respondent No. 2
.....

CORAM : N.W. SAMBRE, J.

**Reserved on : 02/04/2016
Pronounced on: 05/04/2016**

ORAL ORDER :

This petition is by the husband. Respondent No.2 wife initiated the proceedings under the provisions of Protection of Women from Domestic Violence Act, 2005 (For short, 'Domestic Violence Act').

2. By way of present petition, the petitioner-husband has prayed that the order passed by learned Additional Sessions Judge, Aurangabad in Criminal Appeal No.232 of 2012 decided on 13/12/2013, as also decision of 18th Joint Judicial Magistrate, First Class, Aurangabad in Misc. Criminal Application No. 1331 of 2011 decided on 24/08/2012 be quashed and set aside, for non compliance of the mandatory requirements provided under Section 329 of the Code of Criminal Procedure.

3. The facts, as are necessary for deciding the present petition, are as under :-

Respondent No. 2 Amrapali filed Misc. Criminal Application No. 1331 of 2011 before learned Magistrate invoking the provisions of Domestic Violence Act. She claimed that she was married to the petitioner on 25/04/2010 in accordance with rituals followed by *Bauddha* religion. She would then submit that in view of cruelty and attempt on her life, she was driven out of home, as such, she went and started residing with her mother. There was demand of dowry also.

4. The respondent No. 2-wife has also initiated the proceedings for grant of maintenance. In the present proceedings under the Domestic Violence Act, she prayed that pursuant to the

provisions of Section 18, she be granted protection from petitioner-husband, pursuant to Section 19, she be provided with rent of Rs.5000/- and it be ordered that *stridhan* be refunded to her and be granted maintenance of Rs.5000/- per month under Section 20 and compensation of Rs.2,00,000/- under Section 22.

5. The petitioner-husband through his mother filed reply to the said claim and denied entitlement of respondent-wife to the reliefs claimed under the provisions of Domestic Violence Act. It is claimed by the petitioner-husband through his mother that petitioner-husband is taking treatment for psychiatric problem as he is suffering from paranoid schizophrenia. It is then claimed that he needs proper cheerful and comfortable atmosphere at home and claimed that he is not in a position to pay maintenance and accordingly, the petitioner prayed for rejection of the application.

6. The respondent-wife entered into witness box and examined herself in support of her claim under the Domestic Violence Act. She was subjected to cross examination through a lawyer of her husband. She also examined her mother in support of her claim and she was also subjected to cross examination. The mother of the petitioner filed examination in chief on behalf of the husband and was subjected to cross examination.

7. The learned Magistrate thereafter proceeded to record

the findings that present respondent-wife is entitled for the amount of Rs.2000/- per month towards rent, Rs.2000/- per month towards maintenance and Rs.25,000/- towards compensation by an order dated 24/08/2012. The petitioner then filed an appeal under Section 29 of the Domestic Violence Act questioning the legality of the said order passed by learned Magistrate, which came to be dismissed by an order dated 13/12/2013 by Additional Sessions Judge, Aurangabad. As such, present writ petition.

8. Mr. Surve, learned Counsel for the petitioner-husband, while trying to make the case for seeking quashing of the orders impugned, would urge that the mother of the petitioner is an illiterate lady and as such, was not in a position to raise appropriate issue at the relevant time in relation to serious psychiatric problem faced by the petitioner. He would submit that so far as the mental condition of the petitioner is concerned, though appropriate pleadings were raised, no issue, particularly in view of the provisions of Section 329 of the Code of Criminal Procedure was framed. According to him, though sufficient case laws were placed on record so as to depict that the present petitioner was not in a fit state of mind to give proper instructions in order to enable his Advocate or himself to defend his case and as such, the orders against him ought not to have passed. He has relied upon the judgment of this Court in the matter of **Balu Ganpat Koshire vs. State of Maharashtra** reported in **1983(2)**

BOM.C.R. 231 so as to substantiate that the fact about mental illness of the petitioner is an issue, which could have been properly adjudicated upon and is vital issue, while deciding the proceedings in question. According to him, the proceedings as such vitiates. He has also invited attention of this Court to the various other judgments on the same line, particularly in relation to the provisions of Section 329 of the Code of Criminal Procedure so as to submit that without recording the finding as to insanity of the petitioner, the Court ought not to have proceeded further against him. He would then submit that this Court should remand the matter to the Magistrate for framing appropriate issue, particularly in the light of provisions of Section 329 of the Code of Criminal Procedure for deciding the mental condition of the petitioner afresh and then to fix the liability against him.

9. In addition to above, he would submit that earning of the petitioner was not proved and as such, the findings on maintenance as are recorded, are without any basis. He would then lastly submit that there is deprival of raising appropriate defence in view of the mental condition, as such, this Court should show indulgence by remanding the matter back to learned Magistrate.

10. Learned Counsel for the respondent-wife supported the orders impugned on the ground that the issue as regards mental condition as is raised in the reply does not depict any serious mental

illness to the petitioner. He would then submit that appropriate reply was filed on merit and it is claimed that the petitioner is a lunatic person. It is then claimed that there is no material whatsoever brought on record so as to demonstrate his mental condition and to take benefit under Section 329 of the Code of Criminal Procedure. According to him, learned Magistrate has rightly decided the issue brought before it and learned Sessions Court has also dwelt upon the issue under Section 329 of the Code of Criminal Procedure. He would then submit that the present writ petition be dismissed.

11. It is required to be noted that the present petitioner filed his reply on merit before learned Magistrate to an application preferred under the Domestic Violence Act. In the said reply, the marriage was specifically admitted. It is then claimed that the petitioner is lunatic and is taking treatment in the Government Hospital at Aurangabad. It is then claimed that respondent-wife is earning around Rs.8000/- per month and as such, she is not entitled for any maintenance. So as to substantiate mental condition of the petitioner, certificate dated 09/08/2012 is placed on record, which is issued by the Associate Professor of Psychiatric Department, Government Hospital, Aurangabad. It is certified that since November, 2011, the petitioner is under treatment of the said Doctor as he is suffering from Paranoid Schizophrenia. Schizophrenia is a long term mental disorder of a type involving a breakdown in the

relation between thought, emotion and behaviour and leading to faulty perception, inappropriate actions and feelings, withdrawal from reality and personal relationship into fantasy and delusion and a sense of mental fragmentation. It is termed as, disorder which affects thinking and behaviour of the person. In paranoid schizophrenia, a patient has delusions (false beliefs) that a person or some individual are plotting against them or members of their family.

12. So far as the said certificate is concerned, learned Magistrate had no occasion to deal with the said issue, as the mother of the petitioner, who has entered into witness box and has stated that he has termed to be lunatic. There is a vast difference between the word 'lunatic' and 'the person suffering from paranoid schizophrenia'. The mental status of the present petitioner, who claims to be a lunatic, was at all not established before the Courts below by cogent evidence, rather it appears that the said plea was raised with an intention to overcome the liability of payment of maintenance to the respondent-wife. It is required to be noted that mother of the petitioner has filed affidavit on 25/07/2012 stating that the petitioner is removed from service, whereas at page No. 114, the salary slip of the petitioner placed on record depicts that in February, 2013 the petitioner has drawn salary of Rs.10,119/- and the said document in fact is not denied by the petitioner.

13. Apart from above, it is required to be noted that the issue as regards the benefit under Section 329 of the Code of Criminal Procedure was duly looked into by the revisional Court and the revisional Court then has proceeded to assess the entire material on record and has given findings that appropriate opportunity was given to the petitioner, who was represented through his mother and as such, no case for any benefit under Section 329 of the Code of Criminal Procedure was made out before the Court. Neither original certificate is placed on record nor Doctor was examined so as to certify mental health condition of the petitioner.

14. In the above referred background, in my opinion, no case for interference, in the extraordinary writ jurisdiction, is made out. As such, the writ petition fails and stands rejected.

[N.W. SAMBRE, J.]