

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

CRIMINAL WRIT PETITION NO. 1061 OF 2012

1. Dr. Pradnya s/o Taterao Kamble,
Age: 38 years, Occu: Private Practice,
R/o: 14-226, Mirjallagoda,
Secundrabad, A.P.
2. Taterao s/o Masaji Kamble,
Age: 64 years, Occu: Social Service,
R/o: 14-226, Mirjallagoda,
Secundrabad, A.P. ...Petitioners

versus

Dr. Alkarani w/o Pradnya Kamble,
Age: 29 years, Occu: Medical Practitioner,
R/o: Sangvi (Bk.), IIB Cultural Society,
Nanded ...Respondent

WITH
CRIMINAL WRIT PETITION NO. 1133 OF 2012

Smt. Alkarani w/o Pradnya Kamble,
Age: 31 years, Occu: Nil,
R/o: Indian Japan Buddhist
Cultural Society, Sangvi(Bk.)
Tq. and Dist. Nanded ...Petitioner

Versus

1. Dr. Pradnya s/o Taterao Kamble,
Age: 39 years, Occu: Service,
R/o: Yeshoda Hospital,
Behind Harihara Kalabhara,
S. P. Road, Secundrabad, A.P.
2. Taterao s/o Masaji Kamble,
Age: 65 years, Occu: Social work,
R/o: 14-226, Mirjallagoda,
Secundrabad, A.P. 500 047
3. Nirmalabai w/o Taterao Kamble,
Age: 55 years, Occu: Household,
R/o As above
4. Milind s/o Taterao Kamble,

Age: 35 years, Occu: Service,
as J.M.F.C. Atmakar Court,
Dist. Maheboobnagar (A.P.)

5. Karuna w/o Tippanna Denge,
Age: 32 years, Occu: Service,
as Lecturer Osmania University's
Women's College, Koti
Hyderabad, R/o Flat No. 505,
Balaji Arcade, Ravindra Nagar,
Sitaphalmandi, Secundarabad (A.P.)
6. Nalanda d/o Taterao Kamble,
Age: 30 years, Occu: Service,
14-226, Mirjalguda,
Secundarabad (A.P.) 500 047

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Mr. P. K. Chaware, Advocate for petitioners in Cr. W. P. No. 1061/2012 and
for respondents in Cr. W. P. No. 1133/2012

Mr. M. M. Parghane, Advocate h/f Mr. G. G. Kadam, Advocate for
petitioner in Cr. W. P. No. 1133/2012 and for respondent in Cr. W. P.
No. 1061/2012

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CORAM : N.W. SAMBRE, J.

DATE : 21st MARCH, 2016

ORAL ORDER :

Heard Mr. Chaware, learned Counsel for the petitioners
i.e. husband and his father and Mr. Parghane, holding for Mr. Kadam,
learned Counsel for respondent-wife.

2. It is claim of the parties, who are Doctors by profession
that they got married on 02/11/2009. It is claimed that marriage took
place at Nanded and place of residence of husband is at
Secundarabad.

3. After the marriage, wife went to the place of the husband and started cohabiting with him.

4. It is claimed that, the husband, who is holding M.B.B.S. degree and working as Registrar in Yashoda Hospital, Secundarabad has gained experience of about 10 years and became expert in treating the patients of diabetic. It is further claimed that, the income earned from profession by the husband is about Rs. 50,000/- p.m. Apart from above, it is further claimed that the husband is getting income from other sources also, such as, his father who is managing certain properties, the educational institutions, etc.

5. The claim of the husband against wife is that she is B.A.M.S. doctor and has her own independent source of income. It is claimed that, after separation, she was working with her father, who is doctor, having multi-speciality Hospital. It is brought to the notice of this Court that the wife is presently working as Medical Officer with the Zilla Parishad, Nadend in Health Department and today getting salary of Rs. 17,000/- p.m.

6. In the above referred background, it is brought to the notice of this Court that the husband had filed an application for

divorce which already granted by the Court below. The application for restitution of conjugal rights moved by wife came to be rejected. Apart from above two proceedings, the wife moved an application under the provisions of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “Act” for the sake of brevity). In the said application, which came to be registered as Criminal Misc. Application No. 232 of 2010, the wife narrated certain violent acts on the part of the husband and claimed entitlement of entry of wife in the house of the husband with protection, return of dowry amount of Rs. 5,00,000/-, expenses amount of Rs. 6,00,000/-, gold 25 *to*las valued at Rs. 5,00,000/- and other material worth of Rs. 2,00,000/-. the compensation of Rs. 25,00,000/- was sought in the matter and the amount of Rs. 25,000/- is claimed towards the maintenance.

7. After the proceedings were conducted by the Magistrate and the evidence of respective parties was recorded, learned Magistrate in Criminal Misc. Application No. 232 of 2010 passed an order directing the payment of maintenance of Rs. 20,000/- p.m. from the date of filing of the application, Rs. 2,50,000/- to be paid by the husband and his father to the wife/daughter-inlaw towards compensation and Rs. 2,00,000/- towards marriage expenses within one month from the date of order. The amount of Rs. 1,000/- was also granted towards litigation expenses.

8. Feeling aggrieved thereby, the husband preferred an appeal before the learned Sessions Court, pursuant to the provisions of Section 29 of the Act. One more appeal was preferred by wife bearing Criminal Appeal No. 71 of 2011 seeking enhancement and other benefits, which are not granted by the learned Magistrate. Both these appeals came to be decided by common order by the learned Sessions Court on 25/10/2012. The learned Sessions Court upheld the order passed by the Magistrate. As such, present petition.

9. While questioning the legality and validity of the order passed by the learned Magistrate and that of learned Sessions Judge, Mr. Chaware, learned Counsel for the husband would submit that the order is based on conjunctures and surmises as the reading of both the orders would reflect that contradictory findings are recorded by the Courts below. He would submit that the orders passed by the learned Magistrate and the learned Sessions Judge are without taking into account evidence that was brought on record, particularly as regards the independent source of income of doctor Pradnya-husband, in the matter. Learned Counsel then would urge that, the parties to the proceedings have jointly, on their own, spent certain amount on marriage and the order of payment of marriage expenses in the said background was uncalled for. He would invite

attention of this Court to the fact that the husband was ready and willing to stay separate along with wife. However, the applicant wife was not accepting the said condition and had voluntarily left the home. According to him, no violence, what so ever was practiced on the wife and as such, compensation pursuant to the provisions of Section 22 of the Act ought not to have ordered.

10. Mr. Chaware, learned Counsel for the petitioner-husband then would urge that the wife is already gainfully employed and as such, was not entitled for the maintenance.

11. Learned Counsel for the respondent-wife, who has also preferred Criminal Writ Petition No. 1133 of 2012, would submit that once the Magistrate has reached to the conclusion that the complainant wife was entitled for maintenance, compensation and return of marriage expenses, least that was expected of the Magistrate, was to give some space in the house, where husband is residing or in the alternative to reimburse the amount of rent. He would then try to justify both the orders to the extent of being opposed by learned Counsel for husband and his father. He would submit that, even maintenance amount is linked to the findings as regards the income of the husband recorded by the learned Courts below. He would submit that the petition of the husband be rejected

and the petition of wife be allowed by enhancing the maintenance and ordering appropriate arrangement for accommodation of wife or for reimbursing the amount of rent.

12. Having considered the rival contentions of the parties, it is required to be noted that the object with which Domestic Violence Act is enacted is required to be considered. It is with an intention to attend and address the call of a lady, married woman in distress, to be attended forthwith. Apart from above, it is required to be noted that the object of giving effect to the proceedings of statute is particularly having regard to the socio-legal structure of the society.

13. In the above referred background, it appears that though learned Magistrate has recorded findings that the complainant wife had voluntarily left home of husband, still such findings are in the background of fact as regards the alleged cruelty for which the wife was subjected by the husband. The provisions of the Act, particularly remedial measures provided in view Section 18 contemplate passing of protection order, Section 19 residence order, Section 20 monetary reliefs and Section 22 compensation order, has prevailed upon learned Magistrate and learned Sessions Court to exercise the powers in favour of the complainant wife. It is required to be noted that there is enough material brought on record so as to establish

that source of income of the husband is that of his medical profession and having regard to the nature of work that he is doing, his earning is Rs.50,000/- per month. Learned Magistrate, without considering other source of husband, has proceeded to award maintenance of Rs.20,000/- per month to the wife as against the claim of Rs.25,000/- per month. It is to be noted herein that when the order of maintenance came to be passed, learned Counsel for the husband was fair enough to submit that at that time, wife was not gainfully employed. Though he relied upon certificate of monthly salary paid by Zilla Parishad, Nanded to the wife for working as Medical Officer, still, the said fact and evidence was admittedly not brought before learned Magistrate when he exercised powers under the provisions of Domestic Violence Act.

14. However, it is required to be noted that in such an eventuality as regards change in the circumstances as is pointed out by learned Counsel for husband Mr. Chaware, could be addressed to and remedial measures for the same are provided under Section 25 of the Domestic Violence Act, which provides for alteration of the order. In view of above, after observing that it shall be open for the husband to take recourse to the provisions of Section 25 of the Act seeking alteration of the order to the extent of liability to pay maintenance, in my opinion, so far as payment of maintenance as

ordered, does not call for any interference and challenge to that effect, raised in the petition, fails and stands rejected.

15. The second limb of submission of Mr. Chaware is, whether both the Courts were justified in awarding compensation, so also refund of marriage expenses.

16. So far as the issue of refund of marriage expenses is concerned, it could be gathered from the pleadings and evidence of the parties as is brought on record that both the parties are financially well off and having regard to their standard of living, they have spent amount for performing marriage in question. Though the wife has come out with a case that amount of Rs.6,00,000/- was spent on marriage, still, in view of admission given by the husband that the amount of about Rs.2,00,000/- was spent on marriage was considered to be the basis for ordering payment of marriage expenses to the complainant wife by the husband and his father and said fact could be easily spelt out from the provisions of Domestic Violence Act and appropriate attention could be drawn for the said purpose from the provisions of Section 20 of the Act.

17. In view of above, the said findings also do not call for any interference.

18. The last limb of submission is, whether the Court was justified in awarding compensation of Rs.2,50,000/- to the complainant wife. It is required to be noted that learned Magistrate, while dealing with the issue of compensation perhaps has formed an opinion for entitlement based on the requirements of Section 22 of the Act. Section 22 of the Act provides for compensation to be awarded for the damages or injuries including mental torture and emotional distress caused by the act of domestic violence committed by the husband. Learned Counsel Mr. Chaware was right in pointing out that there was no physical violence/injury suffered by the original complainant, however, the said section provides for award of compensation, based on mental torture/emotional distress caused by the act of domestic violence.

19. The basis for awarding such compensation as per object of Section 22 of the Act, is required to be examined in the background of pleadings and evidence of mental torture/emotional distress. The compensation of Rs.2,50,000/- awarded in the present case is required to be examined is whether just and proper. So far as the basis for awarding compensation of Rs. 2,50,000/- is concerned, when the judgments of both the Courts below are analyzed, it is required to be noted that the educational qualification

of the parties, their independent earnings and nature of violence is formed to be the basis for the same.

20. In my opinion, the award of compensation of Rs.2,50,000/- is exorbitant. The fact that there is independent source of income to the complainant-wife is not disputed before this Court. Even it was tried to be qualified by stating that the employment of the complainant is contractual in nature and she may lose the said job at any point of time, however, the length of stay of victim with husband and his family, the nature of emotional distress and mental torture is required to be analysed.

21. It is required to be noted that both the Courts were aware of the medical qualification of the complainant-wife. While doing so, it appears that earning of the wife was considered to be Rs.10,000/- per month.

22. In the above referred background, in my opinion, the compensation of Rs.1,00,000/- will be appropriate in the present case, particularly having regard to the nature of allegations about mental cruelty/emotional distress as is pleaded in the application.

23. Thus, the petition preferred by the husband

bearing Criminal Writ Petition No. 1061 of 2012 is partly allowed. The compensation amount of Rs.2,50,000/- is reduced to Rs.1,00,000/-, however, rest of the submissions of the husband stand rejected, in view of the above referred observations.

24. This petition takes me to consider whether the wife is entitled for the benefit under the provisions of Domestic Violence Act, particularly in the matter of Section 19 which provides for residence order.

25. It is brought on record by the respective parties that proposal of the husband to reside separately from his parents was turned down by original complainant wife. The fact that she thereafter started residing with her father and now working as Medical Officer with Zilla Parishad, Nanded is also not in dispute.

26. In this background, the claim of the complainant wife that she is entitled for order under Section 19 does not hold any substance.

27. In view of above, in my opinion, no case for interference is made out. The writ petition bearing Criminal Writ Petition No. 1133 of 2012 preferred by wife fails and stands dismissed.

28. Interim relief, if any, shall stand vacated forthwith.

[N.W. SAMBRE, J.]

Tupe/21.03.16