

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

Criminal Writ Petition No. 1488 of 2015

District : Parbhani

Vijay s/o. Dattatraya Suryawanshi,
Age : 40 years,
Occupation : Business,
R/o. Suryawanshi Niwas,
Ajam Chowk, Shantinagar,
Darga Road, Parbhani,
Taluka & District : Parbhani.

.. Petitioner.

versus

Sau. Sunita w/o. Vijay Suryawanshi,
Age : 32 years,
Occupation : Household,
R/o. Lahuji Nagar, Parbhani,
Taluka & District : Parbhani.

.. Respondent.

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Mr. Anup R. Nikam, Advocate, for the petitioner.

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CORAM : N.W. SAMBRE, J.

DATE : 15TH MARCH 2016

COURT'S ORDER :

1. The respondent herein filed an application seeking benefits under the provisions of the Protection of Women from Domestic Violence Act 2005 [For short, hereinafter referred to as “Domestic Violence Act”]

viz. under Section 18 for protection, residential facility under Section 19, financial assistance under Section 20 and sought orders under Sections 21 and 22 of the said Act. The said application was preferred before the Court of Judicial Magistrate (F.C.), Parbhani, vide Criminal Misc. Application No. 7/2011 which came to be rejected by an order dated June 16, 2012, passed by the learned 5th Judicial Magistrate (F.C.), Parbhani.

2. The wife - original applicant preferred an appeal, being Criminal Appeal No. 57/2012, before the Sessions Judge, Parbhani, questioning verdict of the learned Magistrate dismissing the claim. The learned Sessions Judge, Parbhani, by judgment and order dated 31st August 2015, has allowed the appeal and set aside the order passed by the learned Magistrate dismissing the claim under the Domestic Violence Act. The learned Sessions Judge directed the present petitioner to pay an amount of Rs. 1,500/- per month each to the respondent and her daughter, which will be inclusive of the amount already granted in the proceedings under Section 125 of the Code of Criminal Procedure 1973 and, in addition, to pay an amount of Rs. 2000/- per month towards house rent to the wife and daughter before 10th day of each month.

3. The petitioner - husband, as such, being aggrieved by the judgment and order passed by the learned Sessions Judge, has preferred present petition before this Court.

4. Mr. Nikam, the learned Counsel for the petitioner, would strenuously urge that the order of the learned Magistrate, refusing to grant an order as prayed under the Domestic Violence Act, was after taking into

account the factual matrix, such as, since 2007 the respondent - wife was not staying with the petitioner - husband and parted the company. He would then submit that the learned Magistrate in view of the law laid down by this Court in the case of *Jayesh Uttamrao Khairnar Vs. State of Maharashtra*, reported in *2010 All M.R.(Cri.) 2259*, has observed that since the respondent - wife is not staying with the petitioner and two years prior to filing of the application was not residing with the husband, she was not entitled for the relief under the Domestic Violence Act. He would submit that the procedure as contemplated under Rules 4 and 5 of the Protection of Women from Domestic Violence Rules 2005 is not adhered to, so also, proviso to Section 12 of the Domestic Violence Act. According to him, the findings recorded by the learned Magistrate are at all not looked into by the learned Sessions Judge while reversing the order of the learned Magistrate and granting order under the provisions of the Domestic Violence Act.

5. In the wake of above referred submissions, with the assistance of the learned Counsel for the petitioner, I have perused both the orders i.e. the one passed by the learned Sessions Judge and the another which is set aside by the learned Sessions Judge which was passed by the Magistrate rejecting the application. It is required to be noted that the learned Sessions Judge has considered the pendency of the proceedings in between the parties, particularly in the background of the allegations of cruelty, as alleged. The learned Sessions Judge then relying upon the provisions of Sections 17, 18, 19, 20 and 22 of the Domestic Violence Act has proceeded to evaluate the claim of the respondent based on the evidence that was brought on record. It is considered by the learned Sessions Judge

that the respondent examined herself at Exhibit 13, her sister Kantabai at Exhibit 29 and the petitioner examined himself at Exhibit 33, his wife Sulakshana at Exhibit 39 and father of the petitioner at Exhibit 48. The documentary evidence, such as, invitation card of marriage, tax assessment in respect of immovable house property of the petitioner was also taken into account. The Police complaint at Exhibit 18, the letter of the college from Parbhani at Exhibit 19 and birth certificate of the daughter were taken into account.

6. The learned Sessions Judge after evaluating the oral and documentary evidence has considered the law laid down by this Court in the case of ***Ritesh Ratilal Jain & others Vs. Sandhya w/o. Ritesh Jain***, reported in ***2014(2) Crimes 217 (Bom.)*** and then the law laid down by this Court in the case of ***Sejal Dharmesh Ved Vs. State of Maharashtra***, reported in ***2014 All M.R. (Cri.) 636***, which is relied upon by the Magistrate for negating claim of the respondent was discussed and differentiated. The learned Sessions Judge has also considered the certified copies produced on record as regards depositions in Criminal Application No. 254/2007 at Exhibit 15 and then considered the same qua the claim made before it.

7. In the background of provisions of Section 3 and Section 2(s) of the Domestic Violence Act, the learned Sessions Judge has proceeded to grant the relief as prayed.

8. The learned Sessions Judge has considered that for extending protection under the provisions of the Domestic Violence Act, it is not necessary that a party claiming such relief must be residing with the

opposite side before filing of the application. What is required to be established and considered is the relationship between the parties particularly in the background of the provisions and object of the Domestic Violence Act.

9. Mr. Nikam, the learned Counsel for the petitioner, on facts, though was right in inviting my attention to the fact that in absence of claim of daughter, the learned Sessions Judge has voluntarily proceeded to grant the maintenance. However, it is required to be noted that in the application at Clause 5 seeking order under Section 21, the respondent has specifically come out with a case that the daughter borne out of the wedlock / relationship between the petitioner and the respondent is in the custody of the present respondent. Looking to the object of the statute which is a social legislation made for protection to be provided to the family members who are in distress, in my opinion, the learned Sessions Judge was right in invoking provisions of Section 21 of the Domestic Violence Act and ordering payment of maintenance and accommodation charges in favour of the daughter.

10. Mr. Nikam, the learned Counsel for the petitioner, has placed reliance upon judgment of this Court at Nagpur Bench in the case of *Narayan Jangluji Thool & others Vs. Mala Chandan Wani*, reported in 2015(2) *Bom.C.R.(Cri.)* 213, so as to espouse the cause that if the relationship is denied, the Court should be slow in interfering with the order of refusal to grant benefit under the Domestic Violence Act. However, it is required to be noted that, before this Court, the respondent is legally wedded wife and the daughter borne out of the said wedlock,

whereas in the matter of *Narayan Jangluji Thool & others* (cited supra), the factual matrix reflects that the claim was arising out of live in relationship. In this background, the reliance placed by the learned Counsel for the petitioner on the said citation is misplaced.

11. In view of the above, no illegality is noticed in the order passed by the learned Sessions Judge so as to prompt invoking of extraordinary jurisdiction of this Court under Article 227 of the Constitution of India.

12. In the result, the Petition fails and the same is dismissed.

(N.W. SAMBRE)
JUDGE

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