

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1598 OF 2015

1. Bhausahab S/o. Laxman Kadam,
Age 44 years, Occ. Service,
2. Laxman S/o. Waman Kadam,
Age 76 years, Occ. Agriculture,
3. Anjana W/o. Laxman Kadam,
Age 66 years, Occ. Agriculture

Petitioners No. 1 to 3 R/o. Kharwadi,
Tq. Newasa, Dist. Ahmednagar.

4. Sunita W/o. Atmaram Khamkar,
Age 38 years, Occ. Agriculture,
5. Atmaram S/o. Gundaji Khamkar,
Age 38 years, Occ. Service,

Petitioners No. 4 & 5
R/o. Panchayat Samittee, Newasa,
Tq. Newasa, Dist. Ahmednagar.

...Petitioners

VERSUS

1. Smt. Usha W/o. Bhausahab Kadam,
Age 39 years, Occ. Household,
2. Anirudha S/o. Bhausahab Kadam,
Age 16 years, Occ. Education,
Since Minor through Legal Guardian,
Usha Bhausahab Kadam.

Respondent No. 1 & 2 R/o. C/o.
Vaibhav Pandurang Kanade,
Gurudatta Colony, Ganesh Chauk,
Bolhegaon, Tq. & Dist. Ahmednagar

...Respondents

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Advocate for Petitioners : Mr R P Phatke
Advocate for Respondents : Mr Yogesh Kale h/f Mr. R R Karpe

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CORAM : V. K. JADHAV, J.

DATED : 20th SEPTEMBER, 2016

PER COURT :-

1. Heard finally with consent of the parties at admission stage.
2. Being aggrieved by the Judgment and Order dated 22.7.2011 passed in Criminal Misc. Application No.143 of 2009 by the Judicial Magistrate First Class, Newasa and the Judgment and Order dated 2.11.2015 in Criminal Appeal No.18 of 2014, passed by the Additional Sessions Judge, Newasa thereby confirming the order passed by the Magistrate, the original opponent preferred this Criminal Writ Petition.
3. Brief facts giving rise to the present writ petition are as follows :-
 - a) The respondents preferred an application bearing Criminal M.A.No.143 of 2009 before the Judicial Magistrate First Class, Newasa under section 12 of the Protection of Woman from Domestic Violence Act, 2005 (for short referred to as "the Act of 2005"), for the various reliefs as per the provisions of Sections 18,19,20 and 22. According to respondent No.1-wife her marriage with petitioner no.1

was performed on 6.6.1998 as per Hindu rites and rituals. After the marriage, respondent no.1 wife started cohabiting with petitioner no.1 husband and she was treated well by the petitioner for initial period of 5-6 months and thereafter she was subjected to ill-treatment and harassment by the petitioners for the reasons, as detailed in the application. It has also alleged in the said application that even on 7.12.2003 when she was carrying out five months pregnancy, she was subjected to beating by petitioner no.1 and she came to be admitted in the Hospital. On account of said beating extended to her, foetus in her womb died. Thereafter, respondent no.1 wife was driven out from the house by the petitioner-husband. Meanwhile, she had filed an application for grant of maintenance and the Court accordingly directed the petitioner-husband to pay Rs.1,000/- to respondent no.1 wife and Rs.500/- to respondent no.2. Furthermore, respondent-wife also instituted a civil suit for the partition and separate possession of the ancestral property of the petitioner-husband. It has also stated in the said application that, petitioners got angered/annoyed because of institution of the said suit and accordingly beaten her by giving threats to her that she should withdraw said suit. The respondent-wife with all these allegations sought various reliefs under the provisions of the Act of 2005.

b] The petitioners have strongly resisted the said application by

filing written statement at Exh.18. They have denied the allegations of unlawful demand and ill-treatment being extended to respondent No.1 wife on any count. It has contended that respondent-wife used to avoid household work and on her own accord she left the matrimonial house and started residing with her parents. It has further contended that as the respondent wife herself left the matrimonial house, she is not entitled for any relief.

c] Both the parties lead their oral and documentary evidence in support of their rival contentions. The learned Magistrate by his order dated 2.11.2015 in the said Cri. M. A. No.143 of 2009 partly allowed the application with costs and thereby restrained the present petitioners from causing any type of domestic violence, physically or mentally to the respondent and also directed them not to alienate the property situated at Kharvandi, Tq. Newasa bearing Gat No.790/1 to any other person or not to create any charge. The learned Magistrate also directed the petitioners to provide a rented house at Ahmednagar to the respondents, or to pay rent @ Rs.2,500/- p.m. to them. In addition to this, the learned Magistrate also directed the petitioner to pay Rs.10,000/- as compensation and to pay maintenance @ Rs.2,500/- p.m. to respondent no.1 wife and Rs.1,500/- p.m. to respondent no.2 alongwith costs of Rs.1,000/-. Being aggrieved by the same, the petitioners/original opponents

preferred Criminal Appeal No.18 of 2014 before the Sessions Court, Newasa and the learned Additional Sessions Judge, by order dated 2.11.2015 dismissed the appeal by confirming the order passed by the Magistrate. Hence, this writ petition.

4. Learned counsel for the petitioners submits that respondent No.1 wife, as per her own admission, left the matrimonial house on 2.2.2004 and started residing with her parents at village Bolhegaon, Tq. and district Ahmednagar. The application filed under the provisions of the Act of 2005 on 5.6.2009 itself is not maintainable. There is no evidence of physical or mental cruelty amounting to domestic violence to respondent No.1 wife. Both the courts below have erroneously considered the report of Protection Officer. Further, the courts below have not considered that the maintenance amount is already saddled on petitioner No.1 in Misc. Criminal application No. 150 of 2007 filed under the provisions of Section 125 of Cr.P.C. The relief granted under sections 18-A, 19-D and 20 of the Act of 2005 is prima facie illegal and erroneous. The petitioner No.1 is only earning member in his family and he has to maintain his old aged parents i.e. petitioner Nos. 2 and 3. It is not possible for petitioner No.1 to pay maintenance at the rate of Rs.2500/- p.m. to respondent No.1 and Rs.1500/- to respondent No.2, as awarded by the courts below. Learned counsel submits that since respondent

No.1 was residing separately, there is no question of any violence as defined under the provisions of Act of 2005 and further in view of grant of maintenance to respondent No.1 wife, in the earlier proceedings, instituted under section 125 of Cr.P.C, the grant of maintenance again under the provisions of Act of 2005 is illegal. Learned counsel for the petitioners submits that R.C.S. No. 406 of 2008 instituted by present respondents for partition, possession and perpetual injunction, came to be dismissed by the learned Joint C.J.S.D. Newasa by detailed judgment and order dated 8.2.2016.

In order to substantiate his submissions, learned counsel for the petitioners places reliance on the following judgments:

- I) Manoj Harikishanji Changani & Ors. vs. Prema Shrinivas Changani & Ors, reported in 2013 (1) Bom.C.R. (Cri.) 265,
- II) Kishor Shrirampant Kale vs. Shalini Kishor Kale and Ors., reported in 2010 (3) Bom.C.R. (Cri.) 694,
- III) Sejal Dharmesh Ved vs. State of Maharashtra and Ors. reported in [2014] 0 ALL MR (Cri) 636.

5. Learned counsel for the respondents submits that respondent No.1 was subjected to domestic violence and the same was continued as on date. Thus, respondent wife is entitled to seek protection and to secure orders as per the provisions of sections 18,

19 and 20 of the Act of 2005. Furthermore, learned J.M.F.C. has also considered the order of grant of maintenance passed in earlier proceeding under Section 125 of Cr.P.C. Learned counsel submits that looking to the averments of complaint filed under the provisions of Act of 2005, the conduct of the parties, even prior to coming into force the Act of 2005, could be taken into consideration while passing an order under Sections 18,19 and 20 of the Act of 2005. In the year 2007, the respondent wife had filed an application for grant of maintenance under the provisions of section 125 of Cr.P.C. and in the year 2008, instituted a civil suit for partition and separate possession against the petitioners herein. Even on 3.6.2009, respondent No.1 was subjected to beating by the petitioners herein due to institution of said suit. The petitioners herein subjected respondent No.1 wife to beating in the house of her parents. In the year 2006, the petition for mutual divorce came to be filed. However, the same was not persuaded. Thereafter, in the year 2011, petitioner No.1 herein filed H.M.P. No.2 of 2011 for divorce. However, the same came to be dismissed by 3rd Joint C.J.S.D. Ahmednagar by order 24.9.2013. Learned counsel for the respondents submits that considering all these events, it cannot be said that respondent No.1 wife is not entitled to seek relief under the provisions of Act of 2005. Both the courts below have taken into consideration the financial conditions and income of petitioner No.1 as well as maintenance

order passed under the provisions of Section 125 of Cr.P.C. and passed the impugned orders. The instant criminal writ petition is devoid of any merits and the same is liable to be dismissed with costs.

In order to substantiate his submissions, learned counsel for the respondents places reliance on the following judgments:

- I) V.D. Bhanot vs. Savita Bhanot, reported in 2012 AIR (SC) 965,
- II) Shri Maroti Dewali Lande vs. Sau. Gangubai Maroti Lande and another, reported in 2011 ALL MR (Cri) 3098.

6. I have carefully gone through the judgment and order passed by both the courts below. According to the respondent wife, she was treated well initially for a period of 5-6 months after the marriage, however, thereafter subjected to cruelty for various reasons. After birth of respondent No.2, she came to her matrimonial home, however, even thereafter, she was subjected to beating, abuses etc. on various counts. Even she was driven out from the house alongwith her small child. Thereafter, due to sincere efforts and intervention of her brother, petitioner husband taken her back in his house and accordingly she had started cohabiting with petitioner

husband. She became pregnant, however, her pregnancy was terminated on account of beating extended to her by petitioner husband. Thus, in the year 2007, respondent wife was constrained to file an application bearing Misc. Criminal Application No. 150 of 2007 for grant of maintenance. She had also instituted civil suit for partition and separate possession. However, on that count, she was subjected to beating in the house of her parents by the petitioners herein.

7. Both the courts below have observed that even though respondent wife was subjected to ill treatment and beating continuously, she remained with petitioner husband and cohabited with him. She was constrained to file an application for grant of maintenance and also constrained to institute civil suit for various reliefs. Even she was subjected to beating in her parent's house on 3.6.2009 on the count that she could dare to institute a suit against the petitioners. I do not find any substance in the submissions that as per her own admission, if respondent No.1 wife started residing with her parents, there is no question of any domestic violence and therefore, she is not entitled for any relief under the provisions of the Act of 2005. In the facts and circumstance of the present case, both the courts below have rightly come to the conclusion that the respondent wife is entitled to protection under the provisions of Act of

2005. The petitioner husband is trying to take undue advantage of stray admission given by respondent wife about her stay with her parents since 2004, conveniently ignoring thereby that he was responsible for the same and even thereafter violence remained continued for various reasons. Even though the petition for mutual divorce came to be submitted before the Court in the year 2006, the respondent wife has refused to continue with the said proceedings.

8. Learned counsel for the petitioners has given much importance to the report submitted by the Protection Officer and observations made by the learned Magistrate in para 19 of the judgment in respect of the said report Exh.49. However I do not find any substance in it. In the case of ***Manoj Harikishanji Changani & Ors vs. Prema Shrinivas Changani & Ors (supra)*** this Court has observed that calling of report of the Protection Officer is mandatory Rule and equipping a respondent with a device of getting the application of a woman dismissed on the ground that such report is not called, would be a treatment harsher than the ailment. Some reports contain information filled in a cryptic manner, and such reports do not do much service to the victim. It cannot be forgotten that ultimately the litigant-applicant has to prove the case.

9. In the case of ***Shejal Ved vs. State of Maharashtra (supra)***,

relied upon by learned counsel for the petitioners, the applicant wife stayed with her husband in U.S.A. and after birth of two children, returned to India in the year 2009 and thereafter she filed an application in January, 2010. On the backdrop of these facts, the learned Single Judge of this Court has observed that the wife cannot be taken to be living in any domestic relationship in India, though she is entitled to file an application for domestic violence that took place when she lived in that relationship. However, such an application is required to be filed within reasonable time. The facts and circumstances of the case cited by the petitioners are totally different. In the instant case, respondent No.1 wife had initiated various proceedings and also instituted civil suit for various reliefs and she was subjected to violence by the petitioner husband on account of initiation of said proceedings and institution of suit.

10. In the case of ***Kishor Shrirampant Kale (supra)*** relied upon by learned counsel for the petitioners, the wife remained separate for 15 years and therefore, it is observed that there is no question of any violence. Furthermore, there were no allegations in the complaint about domestic violence by mentioning the recent instances. This case is also cannot be made applicable to the present case.

11. The learned Magistrate has considered the maintenance

amount granted in the earlier proceeding under section 125 of Cr.P.C. and considering the salaried income of petitioner No.1 husband and further agriculture land owned and possessed by the petitioners herein, rightly granted maintenance. I do not find any fault in the order passed by the courts below and there is no substance in the writ petition. Hence, I proceed to pass the following order:-

O R D E R

- I) Writ petition is hereby dismissed.
- II) Writ petition is disposed of accordingly. No costs.

(V. K. JADHAV, J.)

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