

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.1361 OF 2016

1. Bhagyashri w/o Kundan Giri, Age 32 years,
Occ.Household, R/o.C./o.Dattatraya Giri,
Barshi Road, Near Rly. Crossing over Bridge,
Latur.

2. Kum.Mayuri d/o Kundan Giri, Age 11 years,

3. Kum.Vaibhavi d/o Kundan Giri, Age 8 years,

4. Kum.Harshada d/o Kundan Giri, Age 7 years,

Nos.2 to 4 r/o.Shivshakti Society, Sai Nagar,
Dehu Road, Pune.

Petitioners

versus

1. Keshav s/o Ganpati Giri, Age 67 years,
2. Nagarbai w/o Keshav Giri, Age 57 years,
3. Kiran s/o Keshav Giri, Age 37 years,
4. Smeeta Pratap Giri, Age 32 years,
5. Pradnya w/o Keshav Giri, Age 27 years,

All r/o.Shivshakti Society, 1/637, Sai Nagar,
Mamurdi, Dehu Road, Tal.Pune.

Respondents

Mr.S.N.Lele Yelwatkar for petitioners.
Mr.PG.Giri for respondent nos.1 to 5.

CORAM : PRAKASH D. NAIK, J.

Date of reserving the judgment : 30th November 2017
Date of pronouncing the judgment : 22nd December 2017

JUDGMENT :

1. The petitioner no.1 has filed this petition challenging the order passed by Judicial Magistrate, First Class (Court No.1), Latur ('JMFC') in Miscellaneous Criminal Application No.47 of 2014 dated 13th July 2015 as well as order dated 27th June 2016 passed by Additional Sessions Judge, Latur in Criminal Appeal Nos.30 of 2015 and 31 of 2015.

2. The petitioner is the wife of deceased Kundan Giri. Their marriage was solemnized on 7th April 2002 as per hindu rights and customs. Out of the wedlock, three children were born namely Mayuri, Vaibhavi and Harshada. They are impleaded as petitioner nos. 2 to 4 in this petition. The respondent nos.1 and 2 are the father-in-law and mother-in-law of petitioner no.1. Respondent nos.3 is the brother-in-law and respondent nos.4 and 5 are the sisters-in-law of the petitioner no.1.

3. The petitioner no.1 had filed an application under Sections 12, 17, 18, 20, 21 and 22 of the Protection of Women from Domestic Violence Act, 2005 ('D.V.Act'). The said application was filed on 23rd January 2014. The learned JMFC, Latur vide order dated 13th July 2015 partly allowed the said application. The respondent nos.1 and 2 were directed to jointly pay Rs.1,000/- per month to petitioner no.1 towards maintenance. They were also directed to pay Rs.500/- per month to petitioner no.1 towards rent of the house from the date of order. They were further directed to jointly pay Rs.2,000/- to the petitioner as compensation. The application against opponent nos.3

to 5 (respondent nos.3 to 5 herein) was dismissed. Rest of the claims were also dismissed.

4. The petitioner no.1 filed an appeal before the District and Sessions Court, at Latur challenging the aforesaid order of JMFC. The said appeal was numbered as Criminal Appeal No.31 of 2015. The respondent nos.1 and 2 also filed an appeal before the District and Sessions Court, Latur against the order of JMFC, which was numbered as Criminal Appeal No.30 of 2015. The learned Additional Sessions Judge by common order dated 27th June 2016 dismissed the appeal preferred by the petitioner no.1 and allowed the appeal filed by the respondent nos.1 and 2 by setting aside the order dated 13th July 2015 passed by JMFC, Latur. Criminal Miscellaneous Application No.47 of 2014 was dismissed. The petitioner no.1 has, therefore, filed this petition challenging both the orders passed by the Courts below.

5. Learned counsel for petitioners submits that the husband of the petitioner no.1 died in an accident on 10th March 2011. After the death of her husband and till the receipt of amount of compensation, the respondents had treated petitioner no.1 well. However, after receipt of compensation of Rs.5 lakh and amounts from postal recurring deposit of Rs.1 lakh, the respondents had threatened the petitioner no.1 and obtained her signature on blank cheque which was encashed behind her back. Petitioner no.1 was ill-treated physically and mentally to grab the share of petitioner no.1 in the property. After the death of her husband, the respondents had ill-treated her. The respondents were insisting that the petitioner no.1 has no share in the property of her husband and she should leave the

house immediately or else she will be killed. She was not allowed to meet petitioner nos.2 to 4. The respondents also took away 14 tolas of gold ornaments from her person and expelled her from the matrimonial house. She lodged complaints against the respondents on 9th April 2012, 13th April 2012 and 15th April 2012. Police did not take cognizance of the complaint. She is residing with her parents at Latur. It is further submitted that on 4th July 2013, she has lodged a complaint against the respondents at Gandhi Chowk Police Station, Latur. She also lodged a complaint on 24th August 2013 before Mahila Takrar Nivaran Kendra, Gandhi Chowk, Latur. The respondents have expelled petitioner no.1 from the house and separated her from the minor children. They also instigated the petitioner nos.2 to 4 against petitioner no.1, who is their mother.

6. Petitioner no.1 further contends that on 25th June 2013, the respondents called her at Pune and threatened her to withdraw the complaints or else she will be killed. They also caused head injury to her. Petitioner no.1 lodged a complaint before the Women Protection Officer, Latur on 18th November 2013. Since she was expelled from her house, she is residing with her parents. She has no source of income. The respondent no.1 has agricultural land bearing gat no.702 admeasuring area of 89 Ares and land gat no.689 admeasuring area of 73 Ares at Village Lakhangaon, Tal.Vashi, District Osmanabad. The respondents are also having a building in which there are several rooms. The husband of the petitioner no.1 is having undivided share in the joint family. The respondent no.1 is receiving income of Rs.50,000/- per month from the house property, Rs.2.50 lakh from agricultural lands and he is also earning pension. The other respondents were also earning. It is submitted that the

impugned orders passed by the Sessions Judge as well as JMFC are erroneous. The Courts below ought to have taken into consideration that the petitioner no.1 is the legally wedded wife of the deceased and is entitled to get the share in the property of her deceased husband as per joint undivided hindu family. The custody of the minor children ought to have been handed over to petitioner no.1. The Courts below have failed to appreciate that the petitioner no.1 is not having any source of income and, therefore, maintenance claim by her in her application before the Trial Court, ought to have been allowed.

7. Learned counsel for respondents submitted that the Sessions Court has rightly dismissed the appeal filed by petitioner no.1. The Sessions Court has taken into consideration all the aspects while dismissing the appeal of petitioner no.1 and allowing the appeal filed by the respondents. It is submitted that respondent nos.1 and 2 had filed Civil Miscellaneous Application No.453 of 2014 before the Court of Ad-hoc District Judge, at Pune. The said application was filed for appointment of guardians, which has been allowed by the said Court vide order dated 16th November 2016 appointing respondent nos.1 and 2 as the guardians of the petitioner nos.2 to 4. Learned counsel further submitted that the application filed by the petitioner no.1 was based on concocted version and there was no material before the Court for granting relief prayed for by her in her application before the JMFC. It is submitted that the grounds with regards to seeking compensation raised by petitioner no.1 are concocted and after thought. It is, therefore, submitted that the petition may be dismissed.

8. Petitioner no.1 had filed Criminal Miscellaneous Application No.47 of 2014 against the respondents under the provisions of D.V.Act on 23rd January 2014. The marriage between petitioner no.1 and her husband was solemnized on 7th April 2002. The husband of petitioner no.1 expired on 10th March 2011. The case of the petitioner no.1 is that Rs.5 lakh was received towards compensation on account of accidental death of her husband. Rs.1 lakh was also received from postal recurring deposits. The petitioner no.1 was forced to sign blank cheque and the same was encashed by the respondents. It is alleged that the said amount was not given to petitioner no.1. Thereafter the respondents started harassing her. She was told that she is not entitled to share in the property of her husband. The gold ornaments were also taken away by the respondents. The complaints were lodged by her with police station at Latur. The respondents are residing at Pune. The petitioner no.1 was forced to leave the house and since then she is residing with her parents. She has lodged complaint with Latur police on 4th June 2013 and with Women Grievances Cell at Gandhi Chowk, Latur on 24th August 2013 against respondents. The petitioner no.1 is the mother of petitioner nos.2 and 4 and is natural guardian. By forcing petitioner no.1 to leave the house, she has been separated from petitioner nos.2 to 4. On 25th June 2013, she was called at Pune and was threatened to withdraw the complaints. She was assaulted. She was thrown out of the house along with her father. She returned back to Latur. She had lodged the complaint with Women's Grievance Cell on 18th November 2013. The respondent no.1 is in possession of agricultural lands as well as building premises. The petitioner no.1 is entitled for share of her husband in the said properties. The respondents are earning income from the

agricultural lands as well as other sources. The petitioner no.1 has been neglected by the respondents. They have not made any provision of maintenance of petitioner no.1 and towards education of petitioner nos.2 to 4. The Protection Officer has submitted a report on 18th November 2013 and advised her to approach the Court. Petitioner no.1, therefore, prayed in the application under D.V.Act that the respondents be directed to pay maintenance of Rs.10,000/- per month each to the petitioners. The gold ornaments of the petitioner no.1 may be directed to be returned to her. She also sought a direction to allow her to use the premises situated at Shivshakti Society, Sai Nagar, Mamurdi, Dehu Road, Pune. The custody of petitioner nos.2 to 4 be handed over to her. She also claimed compensation in the sum of Rs.2 lakh and compensation received on account of death of her husband. She also prayed that the respondents be restrained from creating third party interests in respect of the properties owned and possessed by the respondents and that protection may be granted from domestic violence at the instance of respondents.

9. Learned JMFC, Latur partly allowed the application directing respondent nos.1 and 2 to jointly pay Rs.1,000/- to petitioner no.1. They were also directed to pay Rs.500/- per month towards rent and Rs.2,000/- as compensation. The application as against respondent nos.3 to 5 was dismissed. The other reliefs sought by the petitioner no.1 were not granted.

10. Learned JMFC appreciated the evidence on record. The Court took into consideration the affidavit in examination-in-chief tendered by respondent no.1 and the evidence of other witnesses examined by

petitioner no.1. Respondent no.1 has also filed his affidavit in examination-in-chief and also examined another witness. The documents relating to order passed by Motor Accident Claims Tribunal in MACP No.535 of 2011 and the receipt of Saint George English School were placed on record as evidence. The Court also heard both the parties. The submissions advanced by both the parties were recorded in the order. The Court thereafter observed that it has come in evidence that the husband of petitioner no.1 had died in accident on 10th March 2011. She has received cheque of Rs.5 lakh as compensation from the company where her husband was working and Rs.1 lakh on account of postal recurring deposits. It is the case of the petitioner no.1 that she was harassed, threatened and abused thereafter. The Court noted the evidence put forth by petitioner no.1 through her and other witnesses. The Court also took into consideration the evidence adduced by the respondents. The respondent no.1 had deposed that after the death of his son, he has taken care of petitioners as they were residing with them. During that period he incurred expenses of them. The cheque of Rs.5 lakh was received in the name of petitioner no.1 from TATA company. After receipt of the said amount of compensation, fixed deposit of Rs.50,000/- has been kept in the name of petitioner no.1 and the remaining amount of Rs.1,34,120/- each has been invested in the name of petitioner nos.2 to 4 in PAN Card Club for a period of nine years. Thereafter on instigation of her father, she changed her behaviour. On 20th March 2013, the petitioner no.1 and her relatives quarreled with the respondents to get the fixed deposit amounts transferred in her name and she left the matrimonial house along with them with her articles, clothes and ornaments.

11. The Trial Court has observed that the petitioner no.1 has proved that domestic violence took place at the hands of respondent nos.1 and 2. The Court further observed that though it is the contention of petitioner no.1 that the house wherein she was residing along with her husband and children is joint family property, except her bare words, she has not produced any cogent evidence on record to that effect. In the absence of which and in view of the law laid down by the Supreme Court, the petitioner no.1 is not entitled for share in the house as prayed by her. The Court further observed that except bare words of her that the petitioner no.1 was having 14 tolas of gold ornaments and that the respondents have taken it, there is no cogent evidence on record to support her contention. On the contrary, she has admitted that the ornaments like Mangalsutra, Ear Rings etc. are on her person which were given to her by her parents as Stridhan. The Court, therefore, rejected her claim for return of ornaments. The Court also dealt with the issue of custody of children. It was observed that the petitioner nos.2 to 4, who are daughters of petitioner no.1, are studying in English medium school namely Saint George English School, Pune. The respondent no.1 is taking care of the children. The petitioner no.1 is educated only upto 9th standard. Thus, after going through the evidence, the contention of petitioner no.1 that respondents have forcefully kept petitioner nos.2 to 4 away from her, cannot be accepted. The Court has observed that considering the welfare of applicant nos.2 to 4 therein, it is just and proper to keep them along with non-applicants till the decision of the application for custody which is pending before the concerned Court at Pune and hence petitioner no.1 is not entitled for custody of the children. The Court further observed that after the death of Kundan Giri, the petitioner nos.1 to 4 were

residing with non-applicant nos.1 and 2 and that she has brought on record the evidence to show that she was ill-treated by respondents causing domestic violence. The Court, therefore, observed that there is no evidence against the respondent nos.3 to 5 about domestic violence. The application as against them was dismissed. However, the Court opined that the petitioner no.1 is entitled for maintenance amount towards rent and compensation from respondent nos.1 and 2. The Court, therefore, directed the respondent nos.1 and 2 to jointly pay Rs.1,500/- p.m to petitioner no.1 towards maintenance as well as Rs.500/- per month towards rent of the house from the date of order.

12. Both the sides had preferred appeals before the Sessions Court at Latur. The learned Additional Sessions Judge appreciated the submissions advanced by both the sides. The Court also considered the evidence on record. The Court, however, came to the conclusion that there was no domestic violence against petitioner no.1. She is not entitled to get the maintenance and separate accommodation as well as compensation. She is also not entitled for custody of petitioner nos.2 to 4. The Court thereby allowed the appeal filed by respondents and dismissed the appeal filed by petitioner no.1. The Additional Sessions Judge has observed that during the life time of the husband of petitioner no.1, she was happily living with the respondents in the joint family. The petitioner no.1 has admitted that even after the death of her husband, she was treated well by the respondents, however, she contended that after receipt of compensation amount, the dispute had started between them. It was further observed that the defence of respondent no.1 is that after receipt of the amount of Rs.5 lakh towards compensation, the

applicant no.1 started claiming entire amount and for that purpose the applicant no.1 and her family members created dispute. The learned Sessions Judge has also observed that it is difficult to digest that when respondent nos.1 and 2 treated the petitioner no.1 very well after the death of Kundan, they would change their behaviour after the receipt of compensation. It is also observed that the petitioner no.1 had admitted that the children have been taking education in the school and that the respondents are looking after the children. The Court opined that it is highly difficult to accept that the petitioner no.1 has been subjected to any violence as defined under Section 3 of the D.V.Act by the respondent nos.1 and 2. The Sessions Court, therefore, refused to grant any relief to petitioner no.1 and accepted the contentions of respondents and allowed the appeal filed by respondent nos.1 and 2.

13. Petitioner no.1 in her application has given several instances of harassment and abuses at the instance of respondent nos.1 and 2. On perusal of order dated 13th July 2015 it appears that the learned Magistrate has appreciated the evidence on record. The order shows application of mind. The Court has refused to grant the reliefs relating to custody of the children as well as other reliefs sought by the petitioner no.1. The Court, however, felt that the respondent nos.1 and 2 have caused domestic violence against petitioner no.1 and they were directed to pay jointly Rs.1,000/- per month to petitioner no.1 towards maintenance. The respondent nos.1 and 2 were also directed to pay Rs.500/- per month towards rent of the house. The Court had observed that considering the welfare of petitioner nos.2 to 4, it is just and proper to keep them along with respondents till the decision of application for custody, which is

pending before the concerned Court. The application was filed by respondent no.1 before the Court of Ad-hoc District Judge-1, Pune for appointment of guardians. The said application was filed by the respondents being grant-parents of the minor daughters namely Mayuri, Vaibhavi and Harshada. It was contended that the petitioner no.1 had suddenly left the house leaving behind the minor children in the custody of respondent nos.1 and 2. Since then the children are under due care of respondents. It was also contended that the minor children are not ready to join their natural mother i.e. petitioner no.1. The respondents are capable of maintaining the minor children. It is in the interest of minors to give their custody to their mother being natural guardian. She has no source of income. The said application was opposed by petitioner no.1. It was contended by petitioner no.1 that the minor children were forcibly kept in custody of respondent nos.1 and 2. After the death of her husband, the respondents started harassing petitioner no.1 and, therefore, she left the matrimonial home. It was also contended that she had filed proceedings under D.V.Act in the Court of JMFC, Latur. The Court allowed the said application vide order dated 16th November 2016. The respondent nos.1 and 2 were appointed as guardians of the minor children viz petitioner nos.2 to 4 herein. The Court while passing the order recorded that the personal interview of the minor girls was conducted by the Court. They have shown willingness to remain in the custody of respondent nos.1 and 2. They stated that they do not wish to go towards mother and that the respondent nos.1 and 2 are well maintaining them. The Court also considered the fact that the learned JMFC, Latur has not granted custody of the children to petitioner no.1. The petitioner no.1 and her advocate, however, remained absent and the matter proceeded

without arguments on behalf of petitioner no.1. The Court, however, considered all the aspects of the matter including custody. The petitioner no.1 herein examined herself before the Court and was cross examined at the instance of respondent no.1. The Court observed that no material was brought on record to raise doubt in respect of care and maintenance given by respondent nos.1 and 2 to the minor children. The petitioner no.1 did not adduce any evidence. The Court, therefore, allowed the application considering the fact that petitioner no.1 has no source of income. She is living at the house of her parents. The respondent nos.1 and 2 have sufficient means to give proper education to the children. Considering the welfare of the minor children, the respondent nos.1 and 2 were appointed as guardians. Learned JMFC while passing the order has also not granted custody of the children to petitioner no.1. However, from the evidence which was adduced by petitioner no.1 based on number of complaints made to the police and other authorities, in respect to violence committed by respondent nos.1 and 2, the Court has observed that the petitioner no.1 has proved that domestic violence took place at the instance of respondent nos.1 and 2. The Court also formed an opinion considering the evidence on record that the petitioner no.1 is entitled for relief of maintenance and residence. The Court, therefore, passed the order dated 13th July 2015 directing the respondent nos.1 and 2 to jointly pay Rs.1,000/- per month to the petitioner no.1 from the date of application towards maintenance and also Rs.500/- per month towards rent of house. Considering the observations made by the Court of JMFC, Latur, there was no reason for the appellate Court to set aside the order dated 13th July 2015. From the evidence it is also apparent that the case of grant of reliefs sought by the petitioner no.1 in the

appeal filed by her was also not made out. However, the appellate Court ought not to have set aside the order dated 13th July 2015. The issue of custody, as stated above, is dealt with by the Ad-hoc District Judge-1, Pune in the application filed by respondent nos.1 and 2. The learned JMFC had kept the issue open till decision in the proceedings relating to custody. It would be open to the petitioner no.1 to initiate appropriate proceedings against order dated 16th November 2016 passed by learned Ad-hoc District Judge-1, Pune.

14. In the circumstances, I pass following order :

ORDER

- (i) Criminal Writ Petition No.1631 of 2016 is partly allowed;
- (ii) The order dated 27th June 2016 passed by Additional Sessions Judge, Latur allowing Criminal Appeal No.30 of 2015 filed by Respondent nos.1 and 2 herein and dismissing Criminal Miscellaneous Criminal Application No.47 of 2014 filed by petitioner no.1 herein, is quashed and set aside, and the order dated 13th July 2015 passed by Judicial Magistrate, First Class, Court No.1, Latur in Criminal Miscellaneous Application No.47 of 2014 is confirmed;
- (iii) The petitioner no.1 is at liberty to initiate appropriate proceedings, if so advised, against the judgment and order dated 16th November 2016 passed by Ad-hoc District Judge-1, Pune in Civil Miscellaneous Application No.453 of 2014 below Exhibit-29;
- (iv) Criminal Writ Petition No.1631 of 2016 is disposed of.

(PRAKASH D. NAIK, J.)

MST