

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2201 OF 2017

KHAJAKHAN HUSAIN DESAI)...PETITIONER

V/s.

SADRUNISSA KHAJAKHAN DESAI & ORS.)...RESPONDENTS

Mr.Manoj Patil, Advocate for the Petitioner.

Mrs.M.R.Tidke, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 18th SEPTEMBER 2017

P.C. :

1 Compilation of documents submitted by the petitioner
is taken on record.

2 By this petition, the petitioner / original respondent /
husband in proceedings under Protection of Women from
Domestic Violence Act, 2005, (hereinafter D.V.Act for the sake of
brevity) is challenging the order passed by the learned Additional

Sessions Judge, Jaisingpur, on 13th December 2016 in his appeal under Section 29 of the D.V.Act, thereby only partly allowing his appeal and rejecting the same in part.

3 Facts giving rise to the instant petition are thus :

(a) Respondent nos.1 to 4 had filed proceedings under Section 12 of the D.V.Act before the learned JMFC, Kurundwad, Taluka Shirol, District Kolhapur, which were registered as Criminal Miscellaneous Application No.65 of 2013. Respondent no.1 herein is the first wife, whereas respondent nos.2 to 4 are minor children of the petitioner. For the sake of convenience, parties shall be referred to in their original capacity hereinafter.

(b) After due trial in the application under Section 12 of the D.V.Act filed by the aggrieved person / wife, the learned JMFC by his order dated 16th March 2015 was pleased to allow the said application partly. Respondent no.1 / husband was directed to pay education fees of original applicant no.3 of the current year to the tune of Rs.40,720/- within 15 days and for second and third

academic year in June 2015 and June 2016. Respondent no.1 was directed to pay Rs.3,000/- as Housing Assistance to applicants. In addition to the maintenance amount granted in Miscellaneous Criminal Application No.39 of 2009, respondent no.1 / husband was directed to pay Rs.1,000/- towards maintenance to each applicant. Towards expenses of marriage of daughter named Nujhad, respondent no.1 / husband was directed to pay an amount of Rs.80,000/- to applicants. In addition, the learned JMFC directed respondent no.1 / husband to pay compensation of Rs.2 Lakh for the domestic violence proved to have been committed by respondent no.1 / husband on the applicant / wife. This order was carried in appeal under Section 29 of the D.V.Act and by the impugned judgment and order dated 13th December 2016, the learned Additional Sessions Judge Jaisingpur, maintained rest of the order by scaling down the amount in respect of marriage expenses from Rs.80,000/- to Rs.30,000/- and compensation for domestic violence from Rs.2 lakh to Rs.20,000/-.

4 Heard the learned advocate appearing for the petitioner / original respondent / husband. He vehemently argued that judgment and order of the learned trial court and learned appellate court are contradictory. Infact, domestic violence is not at all proved. The respondent / husband was discharged from the offence punishable under Section 498A of the IPC by the learned Magistrate in Regular Criminal Case No.25 of 2010 on 22nd March 2011. It is further argued that recovery proceedings initiated by applicant no.1 / wife were also withdrawn on 22nd March 2011 and the applicant cohabited with the respondent / husband subsequently till December 2012. My attention is drawn to the cross-examination of applicant no.1 to demonstrate that respondent / husband had offered her to cohabit with him but she declined. In submission of the learned advocate for the petitioner, therefore, domestic violence itself is not proved and as such, there was no reason to grant relief to the applicant / wife. He further argued that both courts below ignored the fact that an amount of Rs.15,000/- per month was used to be deducted from salary of the

respondent / husband towards General Provident Fund and similarly installment of loan amount to the tune of Rs.22,000/- per month used to be deducted from salary of the respondent / husband. Therefore, the order regarding maintenance, housing assistance and fees of education of applicant no.3 / son is wholly unwarranted.

5 I have carefully considered the submissions so advanced. The respondent /husband is invoking extraordinary writ jurisdiction of this court for challenging orders of the learned trial Magistrate as well as that of the learned appellate court in partly allowing the application under the D.V.Act and granting maintenance and other reliefs to applicants who are wife and children of respondent / husband.

6 Perusal of evidence of respondent / husband goes to show that he is in the employment of Telecom Department of the State and is earning salary of Rs.41,000/- and odd. Applicants before the trial court are his wife and minor children.

7 While exercising writ jurisdiction, this court is not supposed to re-appreciate evidence adduced by the parties. Both courts below came to the conclusion that respondent / husband had committed domestic violence as defined in Section 3 of the D.V.Act. Perusal of evidence adduced by applicant no.1 categorically shows that respondent / husband used to inflict physical and mental cruelty to her by asking her to bring money from her parents and he was not providing food to her. As such, it cannot be said that findings of courts below on the aspect of commission of domestic violence is perverse. Such findings cannot be revisited while exercising extraordinary writ jurisdiction of this court.

8 It is seen from the evidence adduced by the parties that respondent / husband is serving for Telecom Department of the State, earning a salary of more than Rs.41,000/- per month. Only statutory deductions are required to be considered while granting maintenance. General Provident Fund and installment of loan are not required to be taken into consideration for assessing

disposable income. The grant of maintenance is always at the discretion of the trial Magistrate. There is nothing on record to show that such discretion is exercised arbitrarily or capriciously by courts below. The learned JMFC in proceedings under Section 125 of the Code of Criminal Procedure had granted maintenance of Rs.800/- per month to the applicant / wife and Rs.500/- per month to all children who were applicants before the learned JMFC. In addition to that, in D.V.Act proceedings, which are subject matter of this writ petition, maintenance of Rs.1,000/- was granted to each applicant, who are wife and minor children of the present writ petitioner / original respondent / husband. In the wake of large immovable property as well as salary income of the writ petitioner / original respondent / husband, it cannot be said that the discretion so exercised by courts below is perverse or irrelevant.

9 In this view of the matter, there is no merit in this petition and the same is therefore rejected.

(A. M. BADAR, J.)