

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 250 OF 2018

Amit Rameshkumar Agrawal,
Age : 40 years, Occu. : Service,
All R/o C-3/7, Shivtara Garden,
Gananjay Society Kotrude, Pune. ...Petitioner

Versus

- 1] Mrs. Nikita Amit Agrawal,
Age : 37 years, Occu. : Household,
R/o C/o Gopal Loya, 188-B/N-1,
CIDCO, Aurangabad.
- 2] Mr. Lilawati Rameshkumar Agrawal,
Age : Major, Occu. Household,
- 3] Mr. Rameshkumar Agrawal,
Age : Major, Occu. : Business,
- 4] Mrs. Abhijit Rameshkumar Agrawal,
Age : Major, Occu. : Service,

All R/o C-3/7, Shivtara Garden,
Gananjay Society Kotrude, Pune. ...Respondents

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Mr. V. R. Jain (Kamboj), Advocate for Petitioner.

Mr. Girish Nagori, Advocate for Respondent No. 1.

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**CORAM : T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**
DATE : 28-11-2018.

JUDGMENT : (Per Smt. Vibha Kankanwadi, J.)

01. Present petition has been filed by the original

respondent under Article 226 and 227 of Constitution of India for invoking the powers of this Court as well as under Section 482 of Cr. P. C. to quash and set aside the proceeding bearing PWDVA Petition No. 228 of 2017 filed by the present respondent No. 1 / original aggrieved person before 31st J. M. F. C., Aurangabad.

02. The petitioner is the husband of respondent No. 1. Respondent Nos. 2 and 3 are the mother and father of petitioner No. 1. Respondent No. 4 is his brother. Respondent Nos. 2 to 4 are the formal parties.

03. Respondent No. 1 has filed PWDVA petition seeking various reliefs. He has filed P. A. No. 928 of 2008 before Family Court, Pune for restitution of conjugal rights and respondent No. 1 has also filed petition No. 72/2009 before Family Court, Aurangabad under Section 125 of Cr. P. C. for maintenance. On the Writ Petition filed by respondent No. 1, this Court has transferred the marriage petition to Family Court, Aurangabad. It is stated that there was a compromise before Family Court, Aurangabad on 29.8.2009 and both of them agreed to withdraw the petitions. The settlement was to the effect that both were to reside together for the future of their child Aryaman. Accordingly, they stayed in Pune for about

4 years and at Wakad Pune for one year. Thereafter, they went to California U. S. A. on official assignment of the petitioner. Differences arose. Thereafter, the petitioner has filed H. M. P. No. 35 of 2017 before Family Court, Pune for divorce. While they were in California, a consent deed for divorce came to be presented on 8.7.2016. In U. S. A. she had called Police on 22.7.2016 stating that she is not feeling safe. She collected her belongings and went to stay with her friends. The project of the petitioner was completed on 29.7.2016 and the company wanted him to travel back to India. So he booked flight for himself and as well as respondent No. 1 and their child on 30.7.2016. He had transferred 400 US dollars in the account of respondent No. 1 to manage expenses until her flight on 30.7.2016. Accordingly, she came to India and directly went to the house of her parents. After she received summons in the petition filed by him, she filed PWDVA petition before the J. M. F. C. Not a single ground has been shown by her which amounted to domestic violence. Respondent Nos. 2 to 4 had never ill-treated her, as husband and wife were residing separately. Without considering all the facts, learned J. M. F. C., Aurangabad has issued summons. It is stated that none of the acts were within the jurisdiction of

learned J. M. F. C., Aurangabad. The contents in the petition are vague, baseless and made just to harass him. He has therefore, prayed for quashment of the entire proceeding.

04. Heard Mr. V. R. Jain (Kamboj), learned Advocate for Petitioner and Mr. Girish Nagori, learned Advocate for Respondent No. 1. Perused the documents on record.

05. It has been submitted on behalf of the petitioner that perusal of the PWDVA petition would show that none of the acts occurred within the jurisdiction of learned J. M. F. C. The acts are stated to have been committed at California and therefore, as per the provisions of Section 188 of Cr. P. C., previous sanction of the Central Govt. ought to have been taken. The learned Magistrate failed to consider this aspect. He relied on the decision in **Thota Venkateswarlu V/s State of A. P. Princ. Sec. & Anr., [AIR 2011 Supreme Court 2900]**. He has pointed out that when his assignment was over for some reason though the tickets were booked for 30.7.2016 he was required to pre-pone his departure and he came to India on 29.7.2016. However, he had made arrangements and transferred 400 US dollars in the account of respondent No. 1 and on the next date in fact they had come to India.

His petition for divorce is pending. But, in order to give a counter blast to the said proceedings, the proceedings under Domestic Violence Act have been initiated. The learned Advocate appearing for the petitioner also submitted that in their petition for mutual divorce before California Court, the petitioner had agreed to give financial support of Rs. 25,000/- per month to the wife and Rs. 20,000/- per month to the child.

06. Per contra, the learned Advocate appearing for the respondent No. 1 submitted that details have been given regarding the domestic violence committed by the petitioner in the petition itself. Financial security was not provided to the respondent No. 1 since 23.8.2016 i.e. after coming back to India and domestic violence was also done at California as well as at India. Therefore, the learned J. M. F. C. has jurisdiction to entertain the application. There is absolutely no necessity to have a prior sanction of the Central Govt. He submitted that though the undertaking was given in the California Court, the petitioner is not paying the amount as promised. This also amounts to domestic violence.

07. It is to be noted that the domestic violence is not only physical but also financial. From his own

document, the petitioner has stated that he would support financially to the wife as well as son. He has not produced on record whether he has given that support as promised to the wife as well as child. When such evidence is specifically not filed, it will have to be inferred that he has not obeyed his own promise. This is prima facie observation. Further, the fact is to be noted that as per his own saying he had booked the tickets for 30.7.2016 and by leaving the wife and son in another country he has returned back to India. This also amounts to neglect. Merely providing money under such circumstance can not be said to be the proper support. After their return to India what arrangement he has made for their maintenance is not clarified by him. Therefore, since the return of the wife and son in India, the domestic violence either continued or began. Therefore, there is no question of obtaining any previous sanction under Section 188 of Cr. P. C. Further proceedings under Section PWDVA Act are not strictly criminal in nature. The decision on which the learned Advocate appearing for the petitioner has relied was the case under Section 498A and 506 of I. P. C. and also under Dowry Prohibition Act. Therefore, the said ratio is not applicable. When prima facie case is made out, there is no question of exercising

the discretion under Article 226 of Constitution of India and / or under Section 482 of Cr. P. C. There is absolutely no merits in the present petition.

08. Hence, following order;

ORDER

(i) Application is hereby dismissed.

(ii) The amount, if any already deposited in this Court by the petitioner should be given to the respondent No. 1 – Mrs. Nikita Agrawal.

[SMT. VIBHA KANKANWADI]

JUDGE

[T. V. NALWADE]

JUDGE

Dahibhate/-