

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

CRIMINAL WRIT PETITION NO. 257 OF 2018

Rekha Balasaheb Patil
Age: 47 years, Occu.: Household
R/o Flat no.4, Swarup Apt.,
Raymond Colony, Ayodhya Nagar,
Jalgaon, Tq. & Dist. Jalgaon.

..PETITIONER

VERSUS

1. Smt. Durgawati Shridhar Patil
Age: 74 years, Occu.: Household
2. Indrajit Shridhar Patil
Age: 46 years, Occu.: Service,
3. Mrs. Sarika Indrajit Patil
Age: 42 years, Occu.: Household,
4. Smt. Sushma Shridhar Patil
Age: 49 years, Occu.: Service,

All R/o 51, 2/2, Gruharachna Housing
Society, Behind Stella Merrys School,
Wadgaon Sheri, Pune-14.

5. Mrs. Indira Vishal Bhangale
Age: 43 years, Occu.: Service,
R/o Shrividya Plot no.58,
Gananjay Sahakari Gruhanirman
Sanstha, (m) Unit no.3, Kothrud,
Pune 411 038.

..RESPONDENTS

Mr. B.R. Waramaa, Advocate for petitioner.
Mr. S.B. Yawalkar, Advocate for respondents.

CORAM : SANGITRAO S. PATIL, J.
RESERVED ON : 12th SEPTEMBER, 2018
PRONOUNCED ON : 25th SEPTEMBER, 2018

JUDGMENT :-

Rule, made returnable forthwith. Heard finally with the consent of the learned Counsel for the parties.

2. The petitioner has taken exception to the judgment and order dated 06th October, 2017 passed in Criminal Appeal no. 154 of 2016 by the learned Additional Sessions Judge, Jalgaon, whereby the judgment and order dated 29th November, 2016 passed by the learned Judicial Magistrate First Class, Jalgaon, came to be quashed and set aside in PWDVA Application no. 100 of 2014 filed by the petitioner under Section 12 of Protection of Women from Domestic Violence Act, 2005 ("D.V. Act" for short).

3. The petitioner got married to one Balasaheb, who was the son of respondent no.1, on 21st February, 2003. Respondent no.2 is the brother-in-law and respondent nos. 4 and 5 are the sisters-in-law of the petitioner. Respondent no.3 is the wife of respondent no.2. The

father-in-law of the petitioner viz. Shridhar Parshuram Patil died on 03rd March, 2015. Respondent nos. 2 to 4 are residing in the house belonging to respondent no.1 bearing no. 51, 2/2, Gruharachna Housing Society, Wadgaon Sheri, Pune-14. The petitioner is presently residing at Jalgaon.

4. Admittedly, after the marriage, the petitioner started residing in the house in which presently respondent nos. 1 to 4 are residing. After some days, the petitioner and her husband started residing separate in two rooms on the first floor of the said house. It is stated in paragraph no.5 of the application that respondent no.1 used to take rent from the deceased husband of the petitioner in respect of those two rooms. The deceased husband of the petitioner purchased a flat bearing no. 101, D-2, Prasad Nagar, Wadgaon Sheri, Pune. The petitioner and her deceased husband started residing separate from respondent nos. 1 to 4 in that flat with effect from 10th October, 2008. The husband of the petitioner died of heart problem on 16th May, 2009. It is alleged that thereafter respondent nos. 1 to 4 did not

allow the petitioner and her son to visit their house on the say that after the demise of her husband, her son and herself had no concern whatsoever with them. Therefore, she started residing at Jalgaon alongwith her son.

5. It is the case of the petitioner that her deceased husband - Balasaheb was earning Rs.1,25,000/- per month towards salary. He spent a lot of money for repairs and maintenance of the house in which respondent nos. 1 to 4 are residing. It is further alleged that respondent nos. 1 to 5 used to harass, humiliate and insult the petitioner when she was residing with them. They were harassing her even after she started residing separate from them in flat no. 101. It is alleged that respondent no.2 had demanded Rs.3,00,000/- from her deceased husband - Balasaheb on 15th May, 2009. The deceased - Balasaheb was under a great mental pressure because of that demand. Therefore, he suffered from heart attack and expired on 16th May, 2009. It is alleged that the amount received from L.I.C., due to demise of Balasaheb, has been grabbed by respondent nos. 1 to 4. The son of the petitioner is suffering from some psychological problem. He needs

medical treatment. The petitioner has no source of income. She, therefore, prayed for monetary relief of Rs.30,000/- per month from the respondents. She claimed compensation of Rs. 25,00,000/- from the respondents for subjecting her to domestic violence. She further sought a direction against the respondents that they should purchase a dwelling house for the petitioner at Jalgaon and further claimed share in the house in which the respondents are residing. She alleged that all of her ornaments and other domestic articles have been wrongfully retained by the respondents. She, therefore, claimed those ornaments and domestic articles as well.

6. The application filed by the petitioner was resisted by the respondents. They denied all the adverse allegations made by the petitioner against them. They denied that the deceased husband of the petitioner spent anything for repairs and maintenance of the house in which the respondents are residing. It is stated that the said house is the separate property of respondent no.1. She has gifted it to respondent no.2. It is denied that the

respondents grabbed the ornaments or other domestic articles of the petitioner. It is denied that the respondents ever harassed, humiliated or insulted the petitioner. It is denied that respondent no.2 demanded Rs.3,00,000/- from the deceased husband of the petitioner at any point of time. It is stated that he suffered from heart attack and died. It is stated that the petitioner and her husband started residing separate from respondent nos. 1 to 4 in flat no. 101 since the year 2008. Thereafter, the petitioner never resided with respondent nos. 1 to 4 in house no.51 jointly. House no.51 cannot be said to be shared household of the petitioner. The said house, being a separate property of respondent no.1, the petitioner has no right of residence in that house. It is stated that the petitioner received Rs.16,15,899/- after the demise of her husband on various counts. She has invested that amount. She is getting about Rs.1,50,000/- per annum towards interest. She has further let out flat no.101 on leave and license basis. She was getting Rs.12,000/- per month towards license fee in the year 2014, which has been increased to Rs.13,000/- per month in

the year 2015. She is presently residing at the house of her father at Jalgaon. She was not at all subjected to domestic violence by the respondents. The petitioner has no legal right to claim any relief under Sections 18, 19, 20 and 22 of the D.V. Act from the respondents. On these grounds, they prayed that the application may be rejected.

7. The petitioner examined herself and two witnesses in support of her claim. She produced certain documents. As against this, respondent no.2 examined himself and produced certain documents. After hearing the parties and considering the evidence on record, the learned Judicial Magistrate was pleased to allow the application. The learned Judicial Magistrate directed the respondents to pay compensation of Rs.17,00,000/- to the petitioner for causing domestic violence, Rs.10,000/- per month as maintenance from the date of filing of the application i.e. 31st July, 2017 and further directed them to permit the applicant and her son to reside in two rooms on the first floor of house no.51.

8. Being aggrieved by the judgment and order passed

by the learned Judicial Magistrate, the respondent preferred Criminal Appeal no. 151 of 2016. The learned Appellate Judge heard the parties, re-appreciated the evidence and allowed the appeal thereby setting aside the judgment and order passed by the learned Judicial Magistrate.

9. The learned Counsel for the petitioner submits that the learned Judicial Magistrate has delivered an exhaustive and reasoned judgment and allowed the claims of the petitioner. However, the learned Judge of the Appellate Court did not appreciate properly the facts of the case as well as the evidence on record and by a very cryptic judgment rejected the claims of the applicant. The learned Counsel for the petitioner submits that though no period of limitation is fixed for filing application under Section 12 of the D.V. Act, the learned Judge of the Appellate Court held that the application filed by the petitioner was barred by limitation. He submits that the learned Judge of the Appellate Court has wrongly held that after the petitioner and her husband started residing separate in flat no.101, the domestic relationship between

the petitioner on one hand and the respondents on the other came to an end. The learned Counsel submits that the impugned judgment is not only illegal but perverse. He, therefore, prays that the impugned judgment and order may be set aside and that of the learned Judicial Magistrate may be restored.

10. The learned Counsel for the respondents supports the impugned judgment and order. He states that though no specific period of limitation has been given for filing application under Section 12 of the D.V. Act, in view of the judgment in the case of **Joint Collector Ranga Reddy District and Another Vs. D. Narsing Rao and Others (2015) 3 SCC 695**, where no limitation period has been prescribed under statute, power should be exercised within reasonable period. He submits that the petitioner never made any grievance against the respondents when she was residing in house no.51. Even after she started residing separate from them in flat no.101, she did not allege that she was subjected to domestic violence by them at any point of time. Even after the demise of her husband, she did not

lodge any report or file any complaint against the respondents on any count. It is in the month of July 2014, that she, for the first time, filed application under Section 12 of the D.V. Act alleging that she was subjected to domestic violence by the respondents. This belated action on the part of the petitioner itself indicate that the allegations made by the petitioner against the respondents are false. He submits that respondent no.1 has filed a suit for partition against the petitioner and therefore, to give counter blast to that suit, the petitioner filed the above numbered application. The learned Counsel for the respondents submits that House no.51 is the separate property of respondent no.1. Therefore, in view of the judgments in the cases of **S.R. Batra and Another Vs. Taruna Batra (2007) 3 SCC 169** and **Vimalben Ajitbhai Patel Vs. Vatslabeen Ashokbhai Patel and Others (2008) 4 SCC 649**, she is not entitled to claim right to live therein under Section 17 of the D.V. Act. If that be so, the petitioner cannot seek any direction against the respondents to arrange for a house for her residence at Jalgaon. He then submits that flat no.101 is

in exclusive possession of the petitioner. She has let it out on leave and license basis. She is earning Rs.13,000/- per month towards license fees. Moreover, she is earning interest from the amount invested by her that was received by her after the demise of her husband. She is able to maintain herself and her son. Moreover, the case of the petitioner that she was subjected to domestic violence by the respondents is not at all natural, probable and acceptable. No ornaments or other domestic articles have been retained by the respondents.

11. The learned Counsel further relied on the judgment of Madhya Pradesh High Court in the case of **Rajkishor Shukla Vs. Asha Shukla** in **Misc. Criminal Case no. 9246 of 2014** dated 22nd September, 2015 and also the judgment of High Court of Punjab and Haryana in the case of **Omprakash Singh and Others Vs. Shimla Garg** in **Cri.Misc. No. M-24058 of 2014** dated 01st December, 2015, wherein it is observed that domestic relationship, as defined in Section 2(f) of the D.V. Act, arises in respect of an aggrieved person, if the aggrieved person had lived together with the respondent in a shared household. This

living together can be either soon before filing of petition or at any point of time. "At any point of time" under the Act only means where an aggrieved person has been continuously living in the shared household as a matter of right but for some reason the aggrieved person has to leave the house temporarily and when she returns, she is not allowed to enjoy her right to live in the property. However, "at any point of time" cannot be defined as "at any point of time in the past". The learned Counsel submits that after the petitioner and her deceased husband started residing separate in two rooms on the first floor of house no.51, domestic relationship between the petitioner and the respondents came to an end. Moreover, the petitioner and her deceased husband started residing separate in flat no.101 with effect from 10th October, 2008. As such, there was no domestic relationship between the petitioner and the respondents when her husband died. She cannot be said to have lived in a domestic relationship with the respondents in house no.51, as a shared household. In the circumstances, she is not entitled to get any relief under the D.V. Act from the

respondents. The learned Counsel submits that all these facts have been rightly appreciated by the learned Judge of the Appellate Court. He has rightly quashed and set aside the judgment and order passed by the learned Judicial Magistrate. The learned Counsel, therefore, prays that the criminal writ petition may be dismissed.

12. Before dealing with the facts of the case, it would be necessary to reproduce here the definitions of "Domestic Relationship", "Domestic Violence", "Respondent" and "Shared Household" as given in clause nos. (f), (g), (q) and (s) respectively of Section 2 of the D.V. Act, which read as under :-

(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

(g) "domestic violence" has the same meaning as assigned to it in section 3;

(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity

and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

13. The definition of Domestic Violence, as given in Section 3 of the D.V. Act, includes any act, omission or commission or conduct of the respondent which mentally or physically harms or injures the aggrieved person.

14. As seen from the evidence of the petitioner, initially, she was residing with the respondents in house no.51. After some days, her husband and herself started residing separate in two rooms situate on the first floor of that house. The petitioner states in paragraph no. 5 of her application that respondent no.1 was receiving rent from the deceased husband of the petitioner for residing in those two rooms. Admittedly, the said house is the separate property of respondent no.1. The petitioner has come with a case that her husband had spent a lot of money for repairs and maintenance of house no.51. Even if this

version is accepted, spending for repairs and maintenance of house no.51 would not confer any title to the deceased husband of the petitioner in respect of house no.51. The petitioner and her husband started residing separate from the respondents in flat no.101 with effect from 10th October, 2008. There is nothing in the evidence of the petitioner to show that after 10th October, 2008 she resided jointly with the respondents in house no.51. Because of separate residence of the petitioner and her husband from the respondents, domestic relations of the petitioner with the respondents would come to an end, as has been rightly held in the cases of **Rajkishor Shukla Vs. Asha Shukla** and **Omprakash Singh and Others Vs. Shimla Girl** (supra). Residence of the petitioner with the respondents at some point of time prior to her separate residence in two rooms on the upper floor of house no.51 on rental basis itself would be sufficient to bring domestic relations of the petitioner and the respondents to an end from that point of time.

15. Except the bare words of the petitioner, there is absolutely no evidence on record to show that the

respondents subjected her to domestic violence in any manner at any point of time. After the petitioner started residing separate from the respondents, there was no reason for the respondents to harass her. Had the respondents harassed, humiliated or caused any harm to the petitioner, the petitioner and her husband certainly would have taken some action against them. Nothing of that sort has been done at any point of time by the petitioner. Making allegations after about more than five years about the alleged domestic violence itself shows hollowness in the said allegations. There is nothing on record to show that the respondents have grabbed any particular ornament or domestic article of the petitioner. In the natural course, the petitioner would have taken all of her ornaments and domestic articles from house no.51 after she started residing separate from the respondents prior to more than five years. Had they retained her ornaments or domestic articles, she would not have waited for such a long period of time to claim those ornaments and domestic articles.

16. It seems that respondent no.1 claimed share in

flat no.101, therefore, the petitioner, for the first time thought of filing the application under Section 12 of the D.V. Act. In view of the facts of the case, the contention of the petitioner that the respondents subjected her to domestic violence when she was living in domestic relationship with the respondents in house no.51 cannot be said to be natural, characterized as probable and acceptable. Basically, house no.51 cannot be a "shared household" since it is the separate property of respondent no.1. The petitioner and her husband were residing separate from the respondents since before 2008. If that be so, in view of the judgments in the cases of **S.R. Batra** (supra) and **Vimalbai Ajitbhai Patel** (supra) cited on behalf of the respondents, the petitioner is not entitled to claim a right of residence in house no.51 and cannot ask the respondents to arrange for a house at Jalgaon for her residence. Considering the facts and circumstances of the case, evidence of Dr. Amrish Vijaykar (A.W.2) in respect of mental ill-health of the son of the petitioner and also the evidence of her brother Girish (A.W.3) would be of no help to the petitioner to

substantiate her claims made in the application.

17. The petitioner is in exclusive possession of flat no.101. She admits that she has let it on monthly license fee of Rs.13,000/-. She admits in paragraph no.44 of her evidence that she has received Rs.16,15,899/- on various counts after the demise of her husband. As such, the petitioner has sufficient source of income for maintenance of her son and that of herself. There is no whisper about these facts in the application filed by the petitioner. As such she has suppressed the material facts for getting the reliefs against the respondents through Court.

18. The petitioner states that she is possessing a car and that it is being run by her driver. This fact also throws light on the sound financial condition of the petitioner.

19. Considering the above facts and circumstances of the case, the petitioner was not entitled to claim any reliefs against the respondents by filing application under Section 12 of the D.V. Act. The learned Judicial

Magistrate did not appreciate the facts of the case as well as evidence on record correctly and properly; and wrongly allowed the application. The learned Judge of the Appellate Court has rightly quashed and set aside the judgment and order passed by the learned Judicial Magistrate. For the reasons mentioned above, I concur with the findings recorded by the learned Judicial Magistrate to the extent that the domestic relationship between the petitioner and the respondents has come to an end, that the respondents did not subject the petitioner to domestic violence and that house no.51 cannot be treated as "shared household" of the petitioner. In the result, I pass the following order :-

ORDER

(I) Criminal Writ Petition is dismissed.

(II) Rule is discharged.

[SANGITRAO S. PATIL]
JUDGE