

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.159 OF 2017

1. Smt.Chitra Chandrashekhar Shaharkar,
Age 31 years, Occ.Household;

2. Mrunal Chandrashekhar Shaharkar, Age 7 years,
both r/o.C/o.Smt.Nandini Subhash Mahale,
Flat no.8, Soham Society, Mangalmurti Nagar,
Jail Road, Nashik Road, Nashik.

Applicants

versus

1. Chandrashekhar Ramesh Shaharkar,
Age 35 years,
2. Smt.Suman Ramesh Shaharkar,
Age 57 years,
3. Ramesh Namdeo Shaharkar,
Age 66 years,
4. Nandkishor Ramesh Shaharkar,
Age 40 years,
5. Smt.Bhagyashree N. Shaharkar,
Age 30 years,
All R/o.Guruprasad Bangalow,
Panchashil Society, K.J.Mehta High School Road,
Nashik Road, Nashik.
6. The State of Maharashtra

Respondents

Mr.Ketan Dhavle for applicants.
Mrs.G.P.Mulekar, APP, for State.
Mr.Tushar Sonawane for respondent no.1.

CORAM : PRAKASH D. NAIK, J.

DATE : 9th July 2018

PC :

1. Heard both sides for final disposal. The applicant is aggrieved by order dated 1st January 2016 passed by the Sessions Judge,

Nashik in Criminal Appeal No.11 of 2014 arising out of judgment and order dated 26th February 2013 passed by the Court of Judicial Magistrate, First Class, Court No.2, Nashik in Criminal Miscellaneous Application No.172 of 2011.

2. The applicant no.1 is the wife of respondent no.1. The applicant no.2 is the daughter of applicant no.1 and respondent no.1. The respondent nos.2, 3, 4 and 5 are mother-in-law, father-in-law, brother-in-law and sister-in-law of the applicant no.1. The marriage between applicant no.1 and respondent no.1 was solemnized on 31st March 2008 as per Hindu rites. The applicant no.2 was born on 31st March 2009.

3. According to applicant no.1, after few days of marriage, the respondents started harassing her. They started alleging that enough expenses were not made by the family of applicant no.1 during marriage. The respondents had promised the applicant no.1 that they would allow her to continue her studies after the marriage, however, after the marriage was solemnized, she was prohibited from pursuing her studies. She was treated like a maid servant and was compelled to do all household chores. She was verbally and physically abused by the respondents. The applicant no.1 tolerated such cruel act of respondents for maintaining matrimonial relationship. The applicant no.1 was also prohibited from making telephonic calls to her mother and brother. When her family members visited the matrimonial home of applicant no.1, they were insulted in foul language and also demand for money was made by respondent no.1. The applicant no.1 was ailing. The doctor opined that she was pregnant. The respondent no.1 instigated to

respondent nos.2 to 5 to pressurize applicant no.1 to undergo abortion. When the applicant no.1 refused to undergo abortion, the respondents continued to harass her. She was prohibited from taking medicines. She was continuously tortured physically and mentally. She gave birth to a baby girl on 31st March 2009. The respondents did not welcome the birth of girl child and told the brother and mother of applicant no.1 that they would not accept the applicant no.1 in their house unless their demand of money is fulfilled. On 14th January 2009, the respondents ousted the applicants from their home. It is further contended that the respondent no.1 made a false complaint to Women's Right Protection Committee on 2nd December 2009 alleging that the applicant no.1 did not prohibit with respondent no.1. The applicants and the respondent no.1 were called for meetings before the committee, however, respondent no.1 made false statements and left committee during meetings and remained absent on several occasions. Thereafter attempts were made for reconciliation but the attempts were futile. The applicant no.1 thereafter lodged a complaint for offences u/s 498-A, 323, 504, 506 r/w 34 Indian Penal Code. The respondents were convicted for the offence u/s 498-A r/w 34 Indian Penal Code by judgment and order dated 16th April 2015.

4. Applicant no.1 filed Miscellaneous Application No.172 of 2011 before the Court of JMFC at Nashik on 8th June 2011 u/s 12, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 ('D.V.Act'). In the said application, the applicants gave instances of domestic violence committed by the respondents and prayed for several reliefs. It was prayed that the respondents be restrained from committing any acts of domestic violence. The

applicant no.1 also prayed for the maintenance including the medical expenses and other expenses for the applicants in the sum of Rs.10,000/- per month. She also claimed compensation for the harassment caused to her in the sum of Rs.3,00,000/-. It was also prayed that the residential orders be passed by providing accommodation to the applicants. It was also prayed that requisite orders be passed in relation to her ornaments and articles. The respondents filed their say dated 25th January 2012 to the said application. The respondents denied the contentions of the applicant no.1 in the aforesaid application.

5. Applicant no.1 filed her affidavit-in-evidence on 27th March 2012. The respondent no.1 also filed his affidavit-of-evidence on 18th October 2012. In the affidavit-in-evidence, the applicant no.1 has reiterated the instances of domestic violence stated in the application preferred u/s 12 of the D.V.Act. The learned JMFC, by order dated 26th February 2013 held that the applicant no.1 suffered domestic violence at the instance of respondents. The Court, however, directed the respondent no.1 to pay Rs.1,500/- per month to applicant no.1 and Rs.600/- per month to applicant no.2 towards monthly maintenance. The applicant no.1 preferred an appeal before the Sessions Court being aggrieved by the quantum of maintenance awarded by the Trial Court. The applicant no.1 was also aggrieved by the orders refusing to grant the other reliefs prayed in the application.

6. The learned Sessions Judge while deciding the appeal preferred by the applicant no.1 has held that the applicant no.1 failed to prove that she was subjected to domestic violence by the

respondents. Hence she is not entitled for residence order. It is further observed that though there is no domestic violence at the hands of the respondents, the admission of respondent no.1 shows that he refused to maintain his wife and child and therefore the applicants were entitled for maintenance amount. The Court also maintained the same quantum of maintenance awarded by the Trial Court.

7. Surprisingly the Sessions Court rejected the appeal preferred by the applicants challenging the order passed by the Trial Court on the basis of quantum of maintenance and for not granting certain reliefs on the ground that the applicants have not established that there was any domestic violence. The Appellate Court has overlooked the evidence on record and passed the order dated 1st January 2016 contrary to the findings of the Trial Court. The Appellate Court has given a finding that the applicants have not proved that she was subjected to domestic violence by the respondents. Thus they are not entitled to claim residence order. The Appellate Court, however, confirmed the order of maintenance on the ground that though there was no domestic violence at the hands of the respondents, but the admission of the respondent no.1 shows that he refused to maintain his wife and child and therefore they are entitled for maintenance. The Appellate Court, however, did not consider the fact that the applicant no.1 had prayed for enhanced maintenance and for that reason she had approached the Appellate Court. The findings recorded by the Appellate Court are contrary to law and the evidence on record. The Trial Court had assigned cogent reasons for coming to the conclusion that the applicant no.1 has proved that there is domestic violence. The

Appellate Court has brushed aside the evidence and the findings of the Trial Court and dismissed the appeal.

8. The applicants are aggrieved by the aforesaid orders and has preferred this revision application challenging the said orders on several grounds. Learned counsel for the applicants submitted that the orders passed by the Courts below are contrary to evidence on record. There was no reason for the Appellate Court to hold that the applicant no.1 has failed to prove domestic violence. The findings of the Appellate Court are contrary to the evidence recorded by the Trial Court. It is submitted that the applicant no.1 in her evidence had categorically stated that the respondents used to verbally abused her and that she was not treated well from the time of pregnancy. There was nothing on record to show that the relationship between the applicant no.1 and respondents was cordial. It is submitted that the roznama of the proceedings conducted by Women Protection Cell records that there were disputes between the applicant no.1 and respondent no.1. The roznama also records that the respondent no.1 informed the committee that he do not wish to visit the protection cell any more and did not wish to co-habit with applicant no.1. The Courts did not consider the fact that the respondents have been residing in a bungalow consisting of six rooms. The reasons assigned for refusing residence order are contrary to the evidence on record and the principles of law. The applicant no.1 has no independent source of income. The applicant no.2 is a minor daughter of applicant no.1. The respondents are financially sound. The respondent no.1 in his cross-examination has stated that he has two shops in Greenpeace Building. He further admitted that he is conducting the said shop. He also admitted that bungalow of the

respondents has six rooms. It is submitted that the respondent no.1 owns a four wheeler. It is therefore prayed that the order passed by the Appellate Court may be set aside. It is also prayed that the reliefs prayed in the application u/s 12 of the D.V.Act may be granted. It is further prayed that the quantum of maintenance awarded by the Trial Court be increased to Rs.10,000/- per month.

9. Learned counsel for the respondents submitted that the orders passed by the Courts below do not call for interference. It is submitted that the quantum of maintenance awarded by the Trial Court was based on the earnings of the respondent no.1 and thus there was no reason to interfere in the said order. It is further submitted that there are no instances of domestic violence and hence the applicants were not entitled for the reliefs in the nature of residential order or any other reliefs sought by the applicant no.1. It is further submitted that the Sessions Court has rightly observed that the case of domestic violence is not made out by the applicant no.1 and has refused to grant any reliefs of residential order. The Sessions Court also confirmed the order of maintenance awarded by the Trial Court. It is submitted that the respondent no.1 had adduced evidence before the Trial Court. The cross-examination conducted at the instance of the applicant no.1 has not brought on record any evidence to grant the reliefs prayed by the applicant no.1. It is further submitted that the judgment and order of conviction u/s 498-A r/w 34 of Indian Penal Code was set aside by the Sessions Court in Criminal Appeal No.80 of 2015 preferred by the respondents by judgment and order dated 27th April 2018. It is submitted that the Appellate Court has observed in the appeal against conviction preferred by the respondents that the prosecution

has not been able to prove the cruelty as defined u/s 498-A of the Indian Penal Code. It is submitted that in the said judgment the Appellate Court had disbelieved the version of the complainant while acquitting the accused. It is observed by the Sessions Court in the judgment acquitting the accused that the prosecution has failed to bring home guilt of the accused u/s 498-A of IPC and that the accused are entitled for want of evidence required u/s 498-A of IPC. It is submitted that the quantum of maintenance awarded by the Trial Court and confirmed by Sessions Court is appropriate and thus the said orders were not challenged by the respondents.

10. The applicant no.1 had submitted before the Trial Court that she is having no source of income and unable to maintain herself and her daughter. On the other hand, the respondent no.1 is a businessman and shop owner earning monthly income of Rs.25,000/- so also respondent no.3 is getting monthly pension of Rs.25,000/- and the respondent no.3 is also getting monthly pension of Rs.10,000/-. The respondent no.4 is running business is getting Rs.30,000/- per month from his shop. Hence it was prayed that compensation towards mental agony be granted to her including the maintenance to both the applicants. It was also submitted that the protection order restraining respondents from committing domestic violence be passed. It was also claimed that monthly maintenance of Rs.10,000/- including medical expenses and other expenses be awarded. She also claimed Rs.3,00,000/- from respondents towards compensation for causing domestic violence. The Trial Court after analyzing the evidence on record observed that the acts committed by the respondents amounts to domestic violence. It was observed that the applicant no.1 is residing separately at her parental house.

She is unable to maintain herself. Under such circumstances, being the husband, it is the duty of respondent no.1 to maintain the applicant no.1. However, he has omitted his duty by not providing maintenance to applicant no.1, which can cause harm or may endanger to the life of applicant no.1. It was further observed that the act of respondents amounts to domestic violence. The respondents abused her and drove her out of the house and did set of the respondents also false within the definition of domestic violence. Hence, considering the factual aspects and findings the Court held that the applicant therein has established the act of domestic violence on the part of respondents. The Court further observed that the applicants therein have succeeded to establish the act of domestic violence on the part of respondents and are entitled for claiming monetary relief under the act. It was further observed that from the admissions of respondent no.1, it is clear that he is looking after the shop which is in the name of his mother. So it can be considered that he gets sufficient income from the shop. No one depends on the respondent no.1 except the applicants. As husband of applicant no.1 and father of applicant no.2, it is the duty of respondent no.1 to maintain them and he cannot escape from his responsibility. However, the quantum of maintenance which was awarded was of Rs.1,500/- p.m to applicant no.1 and Rs.600/- p.m to applicant no.2. The Court also refused to grant residential order to the applicants on the ground that she is residing at her parents house. The Court further observed that the respondent no.1 in his evidence has stated that the bungalow belongs to his father. The Court did not grant any residential order with an observation that the applicant no.1 had alleged that while she resided with the respondent no.1 at the said premises, she was subjected to domestic violence. The Trial Court

passed a protection order as envisaged u/s 18 of the D.V.Act on the ground that the applicant no.1 has succeeded in establishing the act of domestic violence on the part of respondents including physical, verbal and economic abuse against her.

11. In the application preferred by the applicant no.1 under the D.V.Act, the applicant no.1 has given instances of harassment meted out to her which according to her amounts to domestic violence. It is stated that she was continuously harassed by the respondents. She was abused and assaulted. She was ousted from matrimonial home. The respondents refused to maintain the applicants. They are without shelter and maintenance. The applicant no.1 has to look after the expenses of the applicant no.2. The respondents filed say and denied the contents of the application preferred by applicant no.1. Thereafter the applicant no.1 had tendered her evidence vide Exhibit-15 before the Trial Court on 27th March 2012. In her evidence also the applicant no.1 has referred to the harassment caused to her and the instances of domestic violence. The respondent no.1 also tendered his evidence on 18th October 2012. In his evidence the respondent no.1 has denied the contentions of applicant no.1 made by her in her affidavit-in-evidence. The respondent no.1 was cross-examined by the advocate representing the applicant no.1. In the cross-examination he admitted that when the applicant no.1 had joined the matrimonial home after the marriage, he was residing in a joint family consisting of all the family members. He also admitted that the family owns two shops. It was also admitted that he is not incurring any expenses towards the education and other expenses of applicant no.2. He also do not visit his wife and daughter. He admitted that out of the two shops owned by the

family, he is looking after one shop. It was also admitted that he had made a complaint to Protection of Women Cell and he was called for the inquiry. He was shown Exhibit-39 and the contents therein which was recorded during the course of the inquiry conducted by the Women's Protection Cell. It was pointed out to him that his statement was recorded which was admitted by him. It was stated in the said statement that the applicant no1 should withdraw her complaint made to the police station and in that event he would allow the applicant no.1 to join matrimonial home. It was also stated by him that the decision about the future course of life would be taken on 11th May 2010 in the meeting to be conducted between both the parties. He also admitted that the shops are situated in building known as Green Piece. He was shown photograph of the said building, which was admitted by him. He also stated that the shops situated in the said building are conducted by him. He also admitted the photographs of the bungalow where he and his family are residing and also admitted that the car which was parked near the building belongs to him. He stated that the bungalow consist about six rooms and it is a twin bungalow. The photographs were marked as Exhibit-43 in the evidence.

12. Section 3 of the D.V.Act defines the term domestic violence which means any act, omission or commission or conduct of the respondent/s which harms or injures or endangers the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person tends to do so and includes causing physical abuse , sexual abuse, verbal and emotional abuse and economic abuse, which are explained in detail in the explanation to Section 3 of the D.V.Act. In order to determine whether any act, omission or commission or

conduct of the respondent/s constitutes domestic violence. The applicants had succeeded by adducing sufficient evidence that there was a domestic violence on the part of respondents. Such a finding was given by the Trial Court which did not call for interference. The applicants had prayed for maintenance of Rs.10,000/- to her and to applicant no.2. From the cross-examination of the respondent no.1, which is referred to hereinabove, it is apparent that the family owns two shops. He is looking after the shop. The family is residing in twin bungalow. He also owns a four wheeler. His family is not dependent on him and they have a separate source of income. The respondent nos.2 and 3 are getting sufficient pension. Taking into consideration all these aspects, it was expected that the Trial Court and the Appellate Court would grant a sufficient maintenance to the applicants. The amount of Rs.1,500/- awarded to applicant no.1 and Rs.600/- awarded to applicant no.2 will not be sufficient in the present circumstances. It is also pertinent to note that the respondent no.1 has admitted that he is not providing any maintenance to the applicant no.1 and also to applicant no.2. He is not looking after the expenses of the applicant no.2. It is pertinent to note that the applicant no.2 child requires expenses towards the day to day affairs as well as towards medical education and other expenses. The applicant no.1 was subjected to harassment after the marriage which is spelt out in the evidence. In the cross examination of respondent no.1 his conduct has been brought on record in connection with the complaint filed by him before the Women Protection Cell. Several other relevant factors were brought during his cross-examination. All this evidence clearly establish that there was a domestic violence and the Appellate Court has committed an error in giving a finding that there was no domestic violence. The

Appellate Court has not assigned any reasons for giving such a finding. In these circumstances the applicant no.1 was also entitled for the reasonable compensation. However, as far as residential order is concerned, the applicant no.1 had prayed that she may be permitted to reside in the same premises where respondent no.1 was residing after the marriage. The Trial Court has observed that from the evidence on record it is not established that the premises belongs to the respondent no.1. The applicant no.1 had not prayed for an alternate accommodation or rent in the application preferred u/s 2 of the D.V.Act. The Trial Court had also observed that the applicant no.1 has been residing with her parents and there was nothing on record to show that she is required to pay maintenance etc. In these circumstances, the finding of the Trial Court with regard to the residential order is not required to be disturbed. Although, the respondent no.1 had submitted that case u/s 498-A resulted in acquittal in an appeal preferred by the respondents, that would not make any difference. The instances of domestic violence were analyzed by the Court on the basis of the evidence on record. It appears that the respondents were acquitted by the Appellate Court in an appeal against conviction vide judgment and order dated 27th April 2018. In the circumstances and analyzing the evidence on record I pass the following order :

ORDER

- (i) Criminal Revision Application No.159 of 2017 is partly allowed;
- (ii) The respondent no.1 is directed to pay an amount of Rs.5,000/- per month to the applicant no.1 and Rs.2,500/- per

month to applicant no.2 towards their monthly maintenance from the date of application;

(iii) The respondent no.1 is also directed to pay an amount of Rs.25,000/- towards compensation to applicant no.1;

(iv) The order dated 1st January 2016 passed by Additional Sessions Judge in Appeal No.11 of 2014 is set aside;

(v) Criminal Revision Application No.159 of 2017 stands disposed off.

(PRAKASH D. NAIK, J.)

MST