

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION 166 OF 2018

Sanjay s/o Bapurao Aarewar, V/s Sangita w/o Sanjay Aarewar and others

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri Sk. Sohailuddin, Adv. h/f Shri A.S. Dhore, Adv. counsel for the petitioner.

CORAM: ROHIT B. DEO, J.

DATE: 19th MARCH, 2018.

The petitioner is challenging the order dated 12-12-2017 (Annexure-B) rendered by the Additional Sessions Judge, Kelapur, by and under which, the application seeking dismissal of the appeal preferred by the respondents under Section 29 of the Protection of Women from Domestic Violence Act, 2005 is rejected.

2. The petitioner-husband sought dismissal of the appeal on the ground that by and under the judgment and order dated 13-1-2014 passed in H.M.P. 50/2012, the marriage between the petitioner 1 and respondent was dissolved.

3. Concededly, the dissolution of marriage is after the institution of the proceedings under the Protection of Women from Domestic Violence Act, 2005.

4. It would be apposite to refer to the following observations of the Hon'ble Apex Court in ***Juveria Abdul Majid Patni v. Atif Iqbal Mansoori and another*** reported in (2014) 10 SCC 736.

“18. Even if it is presumed that the appellant has taken “khula” (divorce) on 09-05-2008 and the first respondent is no more the husband, the question arises that in such case whether the erstwhile wife can claim one or other relief as prescribed under Sections 18, 19, 20, 21, 22 and interim relief under Section 23 of the Domestic Violence Act, 2005, if domestic violence had taken place when the wife lived together in shared household with her husband through a relationship in the nature of marriage.”

“29. In the present case, the alleged domestic violence took place between January 2006 and 6-9-2007 when FIR No.224 of 2007 was lodged by the appellant under Sections 498-A and 406 IPC against the first respondent and his relatives. In a writ petition filed by the first respondent the High Court refused to quash the said FIR against him observing that prima facie case under Section 498-A was made out against him. Even if it is accepted that the appellant during the pendency of the SLP before this Court has obtained ex parte

“khula” (divorce) under the Muslim Personal Law from the Mufti on 9-5-2008, the petition under Section 12 of the Domestic Violence Act, 2005 is maintainable.”

5. In view of the enunciation of law by the Hon’ble Apex Court, the proceedings instituted under the Protection of Women from Domestic Violence Act, 2005 cannot be dismissed only on the ground that subsequent to the institution of the proceedings, the marriage stands dissolved.

The petition is sans merit and is rejected.

RKN

JUDGE