

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

CRIMINAL WRIT PETITION NO.581 OF 2019

- 1 Khairunnisa Begum w/o Nafees Ahmed Siddiqui,
Age 68 yrs., Occ. Household,
R/o Dr. Zakir Hussain Nagar, Sillod,
Tq. Sillod, Dist. Aurangabad.
- 2 Syed Idrees Ahmed s/o Nafees Ahmed Siddiqui,
Age 40 yrs., Occ. Business,
R/o as above.
- 3 Syed Ejaz Ahmed s/o Nafees Ahmed Siddiqui,
Age 37 yrs., Occ. Business,
R/o as above.

... **Petitioners.**

... **Versus** ...

- 1 Parveen Begum w/o Syed Rais Ahmed Siddiqui,
Age 40 yrs., Occ. Household,
R/o C/o Anees Ahmed, Compounder,
Madhunagar Hasnabad, Tq. Bhokardan,
Dist. Jalna.
At present C/o Anees Ahmed Nazir Ahmed Syed,
Near Madina Masjid, Dr. Zakir Hussain Nagar,
Tq. Sillod, Dist. Aurangabad.
- 2 The State of Maharashtra,
Police Station, Sillod (City),
Tq. Sillod, Dist. Aurangabad

... **Respondents.**

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Mr. A.N. Deshmukh Saud, Advocate for petitioners

Mr. A.A. Khan, Advocate for respondent No.1

Mr. B.V. Virdhe, APP for respondent No.2

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**WITH
CRIMINAL WRIT PETITION NO.775 OF 2017**

Parveen Begum w/o Syed Rayees Ahmed Siddiqui,
Age 38 yrs., Occ. Household,
R/o C/o Anees Ahmed, Compounder,
Madhunagar, Hasnabad,
Tq. Hasnabad, Dist. Jalna.

... **Petitioner.**

... **Versus** ...

- 1 Syed Rayees Ahmed s/o Nafees Ahmed Siddiqui,
Age 43 yrs., Occ. Service, at present Peon at
Z.P. School, Ner, Tq. & Dist. Jalna. (P.S. Maujpuri)
- 2 Khairunnisa Begum w/o Nafees Ahmed Siddiqui,
Age 67 yrs., Occ. Household,
R/o Dr. Zaker Hussain Nagar, Sillod,
Tq. Sillod, Dist. Aurangabad. (P.S. Sillod (City))
- 3 Syed Idrees Ahmed s/o Nafees Ahmed Siddiqui,
Age 37 yrs., Occ. Business,
R/o as above.
- 4 Syed Ejaz Ahmed s/o Nafees Ahmed Siddiqui,
Age 35 yrs., Occ. Business,
R/o as above.

... **Respondents.**

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Mr. A.A. Khan, Advocate for petitioner

Mr. S.N. Deshmukh, Advocate for respondent Nos.2 to 4

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 11th DECEMBER, 2019.

PRONOUNCED ON : 20th DECEMBER, 2019.

COMMON JUDGMENT :

1 Rule. Rule made returnable forthwith, heard finally with the consent of the parties.

2 Both the petitions are arising out of the Judgment and order dated 04.05.2017 passed in Criminal Appeal No.58/2013 by learned Additional Sessions Judge-2, Jalna, by which the said appeal came to be partly allowed. The said appeal was filed by the original respondents in Criminal Miscellaneous Application No.258/2010 filed before Judicial Magistrate First Class, Bhokardan (Court No.2), Dist. Jalna dated 10.07.2013, whereby the application filed by the original applicant (aggrieved person) under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as, "D.V. Act").

3 Original respondent No.1 and applicant got married as per Muslim rites on 28.05.1995. Original respondent No.2 is the mother-in-law and Nos.3 and 4 are the brothers-in-law of applicant. Original respondent No.1 was serving with Zilla Parishad as peon. It will not be out of place to mention here, that the original respondent No.1-husband has expired on 24.04.2018 at Aurangabad. (Hereinafter the parties are referred by their

nomenclature before Judicial Magistrate First Class, Bhokardan.)

4 The applicant had come with a case that she was treated properly for initial days. Her parents had spent huge amount and had given gifts to the respondent No.1. After one year of marriage, she was harassed, on the count, that she should bring amount of Rs.1,00,000/- from her father for the service of her husband. Ultimately her father gave said amount and then the husband got the service. Initially husband was posted at Dhakalgaon, Tq. Ambad, where he resided with the applicant. After six years of service at that place, the husband was transferred to Zilla Parishad, Avhana. According to the applicant, thereafter the husband developed illicit relations with one lady and he used to bring that lady at her house. In spite of all the efforts to persuade him, had no positive result. Her husband brought the lady and kept her in their house. He started assaulting applicant. As a result of which, she lost her tooth. By taking her gold and silver ornaments she was driven out of the house. Again there were efforts to settle the dispute. Applicant lodged complaint with Womens' Complaint Redressal Forum, where the husband gave compromise document by undertaking that he will not harass the applicant, he would sever the illicit relationship and would properly behave with wife by giving half of the salary. Thereafter, he did not abide by the terms of the compromise. Respondent Nos.2 to 4 were

instigating the husband, thereby she was required to sustain the domestic violence. It was contended that the respondents have house and lodge at Sillod and one more house in MHADA colony in Bhokardan. Applicant is unable to survive in the maintenance granted under Section 125 of Code of Criminal Procedure and therefore, she prayed for various reliefs under D.V. Act including compensation of Rs.10,00,000/-.

5 Respondent Nos.1 and 3 filed common Written Statement at Exh.24 and denied all the allegations. It was contended that the applicant was closely related to the respondents and was pampered child. She was giving harassment to the husband. She oftenly used to say that she remembers her parents and was insisting that she should be left at her parents house. She used to leave house without informing the husband. After he was transferred to Zilla Parishad, Avhana, she resided only for 15 days with husband and then went to her parents house. Even in the month of May, 2006 she did the same thing. He made efforts to bring her back but she refused. He was giving medicines and other needed articles to the wife. There was no domestic violence to the applicant and therefore, the application is not maintainable. Respondent Nos.2 and 4 did not file say, therefore, matter proceeded without say against them.

6 Parties have adduced evidence. On the basis of evidence on

record, the learned Magistrate had come to the conclusion, that the applicant was subjected to domestic violence. She is not entitled to get protection order. It was held that she is entitled to get maintenance, compensation and rent amount. Maintenance has been granted @ Rs.1,000/- per month from the date of the application i.e. 08.12.2010 and further amount of Rs.1,000/- per month is directed to be given towards rent. Amount of Rs.10,000/- is directed to be given as compensation.

7 The said order was challenged before the learned Additional Sessions Judge by the original respondents. After hearing both sides, the appeal came to be partly allowed. Order in respect of maintenance was confirmed. However, the amount regarding rent and compensation was set aside. Hence, both the parties have come to this Court being aggrieved by the order, which has gone against them.

8 Heard both sides in both the matters. It is trite that the High Court in exercise of the writ jurisdiction would be loath in exercising it when there are consistent findings of facts of the two Courts below and can step in only when there is a gross error or perversity in appreciation of evidence. Though the Appellate Court, in this case, has partly allowed the appeal, it was consistent enough in granting maintenance to the applicant. Under the circumstance, the writ petitions are required to be considered.

9 It has been submitted on behalf of the petitioners in Writ Petition No.581 of 2019 i.e. original respondent Nos.2 to 4 that the husband has now expired on 24.04.2018 and then had made an application in the execution petition before the Trial Court that their names should be deleted. In fact, the present petitioners are the in-laws. Applicant was not dependent on the respondent Nos.2 to 4. The mother-in-law is aged 68 and is unable to even maintain herself. The brother-in-laws, though it is stated that they have business, they have their own family to lookafter. Therefore, the execution proceeding cannot go against the present petitioners. The learned Magistrate did not consider that in application under Section 125 of Cr.P.C. i.e. Criminal Miscellaneous Application No.249/2010 under the orders of Judicial Magistrate First Class, Bhokardan, the husband was duty bound to pay maintenance @ Rs.1,500/- per month. While considering the amount of maintenance this amount has not been considered at all. When the applicant-wife failed to prove domestic violence, she was in fact not entitled to get any amount.

10 Per contra, the learned Advocate for the original applicant-wife submits that the learned Magistrate had come to the conclusion, that the wife was subjected to domestic violence. She is now residing with her parents and therefore, the amount towards rent, that has been granted by the Magistrate,

was the correct order. A condition ought not to have been put by the learned Sessions Judge that until she takes the house that rent factually, she is not entitled to get that amount. There was no reason for the learned Additional Sessions Judge to quash the order in respect of payment of compensation.

11 At the outset, after the perusal of the Judgment by learned Magistrate as well as learned Additional Sessions Judge, it can be seen that learned Magistrate had framed a specific point, that whether the applicant has proved that she was subjected to domestic violence and then proceeded to answer the same in the affirmative. However, the learned Additional Sessions Judge did not frame any such point and did not even take that point for discussion. It is merely stated, that though the amount has been granted towards maintenance under Section 125 of Cr.P.C., yet, application for maintenance and other reliefs can be filed under the D.V. Act. In fact, the learned Additional Sessions Judge was expected to appreciate the evidence adduced by the parties to come to a conclusion, as to whether the applicant was subjected to domestic violence. The entire Judgment pronounced by the learned Additional Sessions Judge is under the presumption that the domestic violence has been proved. Perusal of the Judgment by the learned Magistrate would also give a picture, that what has been held to be proved as domestic violence by the applicant is only against the husband. The order

regarding payment of maintenance and other amounts has been passed against the respondent Nos.2 to 4 also. With this background, it was necessary for the Appellate Court to appreciate the evidence and come to a conclusion, as to whether domestic violence is proved against all the respondents or not. When this fact is not adhered to and both the parties are aggrieved by the impugned order, it would be in the interest of justice to remand the matter by setting aside the Judgment and order passed in the Criminal Appeal No.58/2013 and issuing directions to the learned Sessions Judge to deal with the point regarding domestic violence and then pass an appropriate order. Till then the execution proceedings before the Magistrate are required to be stayed. With these observations following order is passed.

ORDER

1 Both the writ petitions are partly allowed.

2 The Judgment and order passed in Criminal Appeal No.58/2013 by learned Additional Sessions Judge-2, Jalna dated 04.05.2017 is hereby set aside. Matter is restored to the File of learned Additional Sessions Judge-2, Jalna.

3 Learned Additional Sessions Judge-2, Jalna, is directed to hear the appeal afresh and by framing specific point regarding domestic violence i.e. whether the applicant has proved that she was subjected to domestic

violence by the respondent Nos.1 to 4, to decide the matter as per law.

4 Parties are directed to appear before the learned Additional Sessions Judge-2, Jalna on 02.01.2020.

5 Till the decision of the said appeal, the execution proceeding i.e. the Criminal Miscellaneous Application No.505/2017 filed by the applicant against the respondent Nos.2 to 4 is stayed.

6 Rule is made absolute in above terms.

(Smt. Vibha Kankanwadi, J.)

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