

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

**CRIMINAL REVISION APPLICATION NO. 284 OF 2017
WITH
CRIMINAL APPLICATION NO. 1816 OF 2019**

1. Budhanshaha Isakhaha
Age 41 years, Occ. Labour
2. Piranshaha Isakhaha
Age 36 years, Occ. Labour
3. Rahisabee Piranshaha
Age 41 years, Occ. Household
4. Rajyabee w/o Yakubshaha
Age 45 years, Occ. Household
5. Nabushaha Ayyubshaha
Age 26 years, Occ. Household
6. Asalamshaha Yakub Shaha
Age 27 years, Occ. Labour

All R/o. Fish Market, Bhoi Galli,
Tambapura, Jalgaon,
District: Jalgaon.

... REVISION APPLICANTS
(Original Appellants)

Versus

1. The State of Maharashtra
2. Hajrabee w/o Budhanshaha,
Age 28 years, Occ. Household,
R/o. Bismilla Chowk, Tambapura,
Jalgaon.
3. Aman Budhanshaha
Age 13 years, Occ. Student

4. Simran Budhanshaha
Age 10 years, Occ. Student
(Respondent nos. 2 and 3 being Minor
under guardianship of Respondent no.2.)

... **RESPONDENTS**
(Original Applicant Nos. 1 to 3)

...
Advocate for Petitioners : Mr. M.A. Tandale
A.P.P. for Respondent/State: Mr. A.P. Basarkar
Advocate for Respondent nos. 2 and 4: Mr. Naseem R. Shaikh

...

CORAM : MANGESH S. PATIL, J.
RESERVED ON: 01.10.2019
PRONOUNCED ON: 05.11.2019

JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned advocate Mr. Naseem Shaikh waives service for the Respondents. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The Applicants are impugning the concurrent findings of the two Courts below passed in a proceeding initiated by the Respondent nos. 2 to 4 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'D.V. Act') whereby the Respondent Nos. 2 to 4 have been found entitled to claim various reliefs under different provisions of the D.V. Act.

3. The learned advocate for the Applicants vehemently submitted that the judgments of both the Courts below are perverse and arbitrary. They failed to appreciate the evidence about the income of the Applicant no.1 who is the husband of the Respondent no.2 and his liabilities. He is a small time fruit vendor which business has been running in losses. He has to maintain his aged mother and has been residing in a one room house. Ignoring this fact the Applicants have been directed to provide one room to the Respondent nos. 2 to 4 for their accommodation. The photographs which were not duly proved were considered by the Courts below. The Respondent no.2 is a divorcee and was not legally entitled to claim maintenance. The direction to return the articles to the Respondent no.2 is vague. A complaint filed by her under Section 498-A of the Indian Penal Code has also been dismissed. There was no evidence about domestic violence. The judgments and orders of the Courts below are perverse and arbitrary and are liable to be interfered with by this Court.

4. The learned advocate for the Respondent nos. 2 to 4 supported the judgments of both the Courts. Their learned advocate submitted that a divorcee wife is entitled to claim maintenance under Section 12 of the D.V. Act. There was ample evidence before the Magistrate to demonstrate that

there was domestic violence. In fact there was no evidence about there being a legal divorce except the bald averment. There was no evidence about there being a legal severance of marital status. There was no evidence about the Applicants having ever provided maintenance to the Respondent nos. 2 to 4. The entire facts, circumstances and evidence were rightly taken into consideration by the learned Magistrate.

5. There is no dispute about the relations albeit according to the Applicant no.1 he has divorced the Respondent no.2. However as has been rightly noticed and concluded by the Magistrate, he has failed to prove that there was a legal Talak. Even the learned advocate for the Applicants was unable to demonstrate before me by referring to the evidence as to how the observations and the conclusions of the Magistrate in this regard are factually and legally not sustainable.

6. On the contrary his such stand of making an assertion that he has divorced her itself is sufficient to draw an inference that he has indulged in domestic violence by subjecting her to mental abuse within the meaning of Section 3 of the D.V. Act.

7. Obviously one cannot expect that there should be direct evidence about physical and mental abuse except the ocular account of the wife.

However all the attending circumstances have to be looked into to draw a reasonable inference. Such assertion by the Applicant no.1 about having even divorced her and being unable to prove it therefore carries importance to draw an inference about his refusal and neglect which must have traumatized her mentally.

8. True it is that the Applicants have been acquitted of a charge levelled by her for the offence punishable under Section 498-A of the Indian Penal Code. However, such acquittal in a criminal case where the offence is expected to be proved beyond reasonable doubt cannot be relied upon and cannot be said to be relevant in a proceeding initiated by a wife under Section 12 of the D.V. Act wherein the allegations are expected to be proved only on the basis of preponderance of probabilities and not beyond reasonable doubt.

9. Apart from the aforementioned circumstance, about taking a defence of divorce which can be regarded as an important circumstance to infer that he has subjected her to domestic violence, publication of a notice in a newspaper is another circumstance which can be considered to infer that he has subjected the Respondent no.1 to mental abuse.

10. Coupled with the aforementioned state of affairs, there is also no evidence to show that since the dispute has arisen the Applicants having ever

made provision for the maintenance of the Respondent nos. 2 to 4. Such passive conduct is also important and clearly demonstrates that the inference drawn by the two Courts below about there being domestic violence is well founded.

11. Again, there was evidence before the Magistrate in the form of a complaint filed by the Respondent no.1 with the Women's Vigilance Committee (Exhibit-26) complaining about the ill-treatment / harassment. Similarly there was evidence before the Magistrate in the form of an undertaking (Exhibit-27) given by the Petitioner No.1 undertaking to maintain her properly. All such evidence according to the learned Magistrate corroborated the version of the Respondent no.2 about the Applicants having subjected her to domestic violence. Relying upon such oral and documentary evidence the Magistrate had rightly come to the conclusion that the Applicants had subjected the Respondent nos. 2 to domestic violence and she was entitled to file a proceeding under Section 12 of the D.V. Act.

12. So far as the reliefs granted in favour of the Respondent nos. 2 to 4 are concerned, the Magistrate had specifically observed that during the cross-examination itself the Applicant no.1 was confronted with the photographs (Exhibit Nos. 35 to 37) and he admitted to be those of his fruit shop. Therefore no fault can be found with the observations of the learned

Magistrate that there was no need for any further proof regarding the photographs. The submission of the learned advocate for the Applicants that the photographs were not duly proved therefore deserves to be discarded.

13. Since it was duly established that the Applicant no.1 was running a fruit stall, the onus was on him to prove his income from the business since it was a fact within his exclusive knowledge under Section 106 of the Indian Evidence Act. He having failed to disclose his income from the business, the learned Magistrate was left with no other alternative but to resort to some guesswork which was inevitable and drew a plausible conclusion that the Applicant no.1 must have been earning around Rs. 1,000/- to Rs.1,500/- daily. The Magistrate also noticed that during cross-examination of the Applicant no.1 he specifically admitted that the Respondent nos. 2 and 4 are school going and require at least Rs.5,000/- to Rs.8,000/- per month for their education. Considering all such objective material the Magistrate came to a reasonable conclusion that he was having sufficient capacity and the Respondent nos. 2 to 4 were in need of a reasonable amount of maintenance and has quantified it at Rs. 3,000/- per month to each. The observations and the conclusions drawn by the learned Magistrate were not at all perverse, arbitrary or capricious which could have been interfered with by the Appellate Court. Even the learned Additional Sessions Judge in appeal has undertaken

and re-appreciated the evidence and has reached a plausible conclusion which cannot be interfered with in this revision.

14. The Revision is dismissed. Criminal Application No.1816 of 2019 is disposed of. Rule is discharged.

[MANGESH S. PATIL, J.]