

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 213 OF 2018

1. Mr. Francis Savio D'Souza,
son of Jerome D'Souza,
major in age,

2. Jerome D'Souza,
son of Andrew D'Souza,
major in age

3. Lucy D'Souza,
wife of Jerome D'Souza,
major in age

4. Sebastiana D'Silva,
married, daughter of
Jerome D'Souza,
major in age
all above, r/o H. No.
267/1, Xelpem,
Duler, Mapusa,
Bardez, Goa.

..... Petitioners

V e r s u s

Mrs. Bonafia Emelia Abreu alias
Bonaficia D'Souza,
R/o Marra – Pilerne,
Bardez – Goa.

..... Respondent

Shri Vibhav Rajiv Amonkar, Advocate for the Petitioner.

Shri John Abreu Lobo, Advocate for the Respondent.

CORAM: C. V. BHADANG, J.
Date: 16th April, 2019.

ORAL ORDER:

By this petition, the petitioners are challenging the judgment and order dated 30/10/2018 passed by the learned Additional Sessions Judge, Mapusa in Criminal Appeal No.151/2017. By the impugned judgment, the learned Sessions Judge, while dismissing the appeal has confirmed the judgment and order dated 9/3/2017 passed by the learned Judicial Magistrate First Class, Mapusa, whereby an application under section 12 of the Protection of Women from Domestic Violence Act, 2005 (the Act, for short) has been partly allowed, directing the petitioner no.1 to pay maintenance of Rs.8000/- p.m. and to provide a reasonable alternate accommodation to the respondent or to pay the rent thereof.

2. The petitioner no.1 and the respondent were married on 4/1/2003 and their marriage is registered before the Sub Registrar of Mapusa-Goa. The petitioner nos.2 and 3 are the parent-in-law, while the petitioner no.4 is the sister-in-law of the respondent.

3. The respondent filed an application under section 12 of the Act, seeking various reliefs against the petitioners. It was contended that after the marriage the respondent was subjected to domestic violence which includes verbal and emotional abuse as well as economic abuse.

4. The application was opposed on behalf of the petitioners.
5. The respondent examined herself (PW.1) and her sister (PW.2) Sebastiana D'Silva. The petitioners chose not to lead any evidence.
6. The learned Magistrate found that the respondent had failed to prove that she was subjected to verbal and emotional abuse. However, the learned Magistrate found that the respondent was subjected to economic abuse and also found that the respondent was forced to stay out of the shared household. It is in these circumstances that the learned Magistrate granted a maintenance of Rs.8000/- p.m. against the petitioner no.1 and also directed him to provide a reasonable alternate accommodation to the respondent or to bear the expenses thereof.
7. I have heard Shri Amonkar, the learned counsel for the petitioner and Shri Lobo, the learned counsel for the respondent. Perused record.
8. It is submitted by Shri Amonkar, the learned counsel for the petitioner that the learned magistrate having held that there was no verbal or emotional abuse, proved by the respondent erred in holding that the respondent was subjected to economic abuse. The learned counsel has taken me through the

application filed under section 12 of the Act and the evidence of the respondent, in order to submit that the same lacks the necessary particulars to establish a case of economic abuse. It is submitted that a finding as to the petitioners having indulged into an act of domestic violence against the aggrieved person, is a *sine qua non*, for granting any relief under section 12 of the Act. It is submitted that the respondent has been staying separate from June 2003 and has approached the magistrate in the year 2011 which shows that the application was not bona fide and only by way of a counter blast to the petition for divorce filed by the petitioner no.1 against the respondent. It is submitted that in any event the magistrate could not have directed the petitioner no.1 to provide for an alternate accommodation or to bear the expenses thereof, particularly when the respondent is staying away from the matrimonial home from June 2003 .

9 On behalf of the petitioner, reliance is placed on the decision of the Supreme Court in the case of **Kishan Singh (Dead) through Lrs Vs. Gurpal Singh and others 2013 ALLMR(Cri) 2360** and the decision of this Court in the case of **Vijaya Vasant Sawant Vs. Shubhangi Ashivling Parab and others** (Criminal Revision Application no.41 of 2011 decided on 1.4.2013).

10. On the contrary, Shri Lobo, the learned counsel for the respondent has supported the impugned judgment. It is submitted that the respondent was asked to visit her parents during the last week of May 2003, which the respondent innocently accepted and she was dropped at her maternal house by her father-in-law. It is pointed out that when she wanted to return back on 4/6/2003, she was not allowed to enter the matrimonial house and as such, she is forced to stay at her maternal place. It is submitted that the petitioner no.1 has filed a divorce petition in the year 2006 and as such, the petitioner no.1 has no intention of taking the respondent back for cohabitation. It is submitted that in these circumstances, the Courts below have rightly held that the petitioner no.1 is liable to pay maintenance and to provide an alternative accommodation to the respondent. It is submitted that there is a clear case of economic abuse made out on the basis of the evidence led. The learned counsel has placed reliance on the judgment of this Court in the case of **Roma Rajesh Tiwari Vs. Rajesh Dinanath Tiwari** (Writ Petition no.10696 of 2017 decided on 12/12/2017)

11. I have carefully considered the rival circumstances and the submissions made.

12. As per section 2 (g) of the Act, domestic violence has the same

meaning as assigned to it in section 3 of the Act. Section 3 of the Act contains an exhaustive definition as to what is domestic violence and economic abuse is one of the species of domestic violence. Section 3(iv) defines economic abuse as under:

3. Definition of domestic violence.—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse;

(iv) “economic abuse” includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved

person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.

13. It can thus be seen the section 3 (iv) of the Act contains an exhaustive definition of what is economic abuse, which includes deprivation of of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under the order of the court or otherwise or the aggrieved person requires out of necessity including but no limited to house hold necessities. It can thus be seen that in a given case, deprivation or failure to maintain to the wife can come within the ambit of an economic abuse. In the present case, admittedly, the petitioner no.1 has filed a divorce petition against the respondent in the year 2006 which is said to be pending and thus the petitioner is not intending to take the respondent back for cohabitation. A specific query was made to the learned counsel for the petitioner as to whether for all these years from the year 2003 till date, the petitioner no.1 has made any provision for maintenance of the respondent, to

which the answer was in the negative. In any case, there is nothing on record to show that the petitioner no.1 although is legally and morally liable to maintain the wife has made any provision for her maintenance. In such circumstances, I do not find that any exception can be taken to the concurrent findings recorded by the Courts below that the petitioner has been subjected to economic abuse which is one of the incidents of domestic violence. The contention that the petitioner has approached the learned magistrate in the year 2011 and therefore she is not entitled to any relief, to my mind cannot be accepted. The Act is a piece of beneficial legislation intended to provide effective protection to the rights of women, who are victims of domestic violence, within the family. Section 12 provides for a variety of reliefs which can be claimed and granted by the magistrate in favour of the aggrieved person, which includes the monetary relief in the form of maintenance, as well as other reliefs. I have carefully gone through the judgment of the learned Magistrate as well of the learned Session Judge and I do not find that they suffer from any infirmity, so as to require interference under Article 227 of the Constitution of India or in exercise of the inherent powers under section 482 of Cr.P.C.

14. The judgment in the case of **Kishan Singh (supra)** pertains to delay in filing a FIR for offences under the Indian Penal Code. It is difficult to see a

to how the said judgment can come to the aid of the petitioner in this case.

15. In the case of **Vijaya Sawant (supra)**, on facts, it was found that the allegations made by the wife were vague and were without necessary particulars.

16. The petition is without any merit and is accordingly dismissed.

C. V. BHADANG, J

Ap/