

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL REVISION APPLICATION NO.23 OF 2017**

Mr. Sanjay Vasant Bhagat,
S/o Vasant Bhagat,
Aged 47 years, married,
Service, R/o H.No.236,
Bhagat Vaddo, Amona,
Sanquelim, Goa.

...Applicant

Versus

Mrs. Sampadha Sanjay Bhagat
w/o Sanjay Vasant Bhagat,
Aged 45 years, married,
Housewife, R/o H.No.236,
Bhagatwada, Amona,
Sanquelim, Goa.

... Respondent

Mr. Iftikhar Agha and Mr. K. Morajkar, Advocates for the Petitioner.

Mr. Amit Palekar, Advocate for the Respondent.

Coram: M. S. SONAK, J

Date: 16th February 2021

ORAL JUDGMENT

1. Heard Mr. Iftikhar Agha for the petitioner and Mr. Amit Palekar for the respondent.

2. The challenge in this Criminal Revision is to the Judgment and Order dated 05.04.2017 made by the Additional Sessions Judge at Mapusa partly allowing Criminal Appeal No. 122/2015 instituted by the respondent herein and issuing the following directions:-

“The respondent herein is directed to pay to the applicant an amount of Rs.3000/- per month and Rs.1000/- per month each to his children, which amount to be paid on or before 5th day of every month. The arrears of the aforesaid amount to be paid by the respondent herein to the applicant and his two children from the date of filing the application under section 12 of the said Act by the applicant within 3 months from the date of this order excluding the amount of interim maintenance already paid to the applicant.”

3. The aforesaid means that the petitioner has been directed to pay an amount of ₹3,000/- per month to his wife Sampadha and ₹1,000/- per month to each of the two children.

4. Mr. Agha, Learned Counsel for the petitioner submits that both the Trial Court as well as the Appellate Court have not recorded any finding that the petitioner committed any domestic violence. He submits that a finding of commission of domestic violence is a *sine qua non* for awarding any monetary reliefs to the opposite parties i.e. the wife and the children in the present case. He points out that in the absence of any findings that the petitioner has committed any domestic violence, the Courts lack jurisdiction to award any monetary relief to his wife and children. Mr. Agha also pointed out that by now the two children have attained the age of majority and therefore, are excluded from the definition of “child” to be found in section 2 (b) from the Protection of Women from Domestic Violence Act (DV Act). He,

therefore, submits that the impugned Judgment and Order be set aside.

5. Mr. Agha also points out that the petitioner has been made to stay out of the residential home and is presently staying with his old mother in rented premises. He points out that two of the rooms in the residential home have been let out by the petitioner's wife and the rents are also appropriated by her. He submits that all these aspects are not properly considered by the two Courts and therefore the impugned Judgment and Order warrant interference.

6. Mr. Palekar defends the impugned order based on the reasoning reflected therein. He submits that all aspects have been considered and there is no case made out for exercise of the discretionary revisional jurisdiction.

7. The rival contentions now fall for my consideration.

8. The main contention of Mr. Agha, in this case, is that in the absence of any finding as to domestic violence, the Court lacks jurisdiction to award any monetary reliefs to the respondent. He placed reliance on **Koushik s/o. Anil Gharami vs. Sau. Sangeeta Koushik Gharami & Ors.**¹, **Mr. Gurudas Sanvalo Naik & Ors. vs. Mrs. Saanvi Gurudas Naik & Anr.**² and **Shri Vjayanand Dattaram Naik & Ors. vs. Smt. Vishranti Vijayanand Naik & Anr.**³

¹ 2014 ALL MR (Cri) 2398

² 2018 ALL MR (Cri) 2375

³ Cri. Rev. Appl. 60 of 2018

9. Section 3 of the Domestic Violence Act provides an exhaustive definition to the expression “*domestic violence*” and the same reads as follows:-

“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; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.—For the purposes of this section,—

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to

life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) “verbal and emotional abuse” includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(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.

10. Now the Appellate Court in the present case has recorded a clear finding that the petitioner has committed “*economic violence*” against the respondents. The expression “*economic violence*” has not been defined under the Domestic Violence Act. However, from the material on record, it is quite clear that the Appellate Court meant that the petitioner has indulged in “*economic abuse*” for which expression, an inclusive definition is to be found in section 3 of the Domestic Violence

Act itself.

11. The Appellate Court, upon consideration of the material on record, has found that the petitioner failed to provide financial assistance to his wife and the children, who, admittedly at that time were minors. This was even though the petitioner had the means to provide for such maintenance to his wife and children. This is a finding that the petitioner has indulged in “*economic abuse*” as defined under the Domestic Violence Act. The expression “*economic abuse*” includes deprivation of all or any economic or financial resources to which the aggrieved person is entitled under the 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.

12. Section 3 (a) of the Domestic Violence Act very clearly provides that any act, omission, commission, or conduct of the respondent shall constitute domestic violence in case it caused physical, sexual abuse, verbal and emotional abuse, and most importantly economic abuse. Though the Appellate Court has referred to “*economic abuse*” as “*economic violence*”, the two expressions, in the facts of the present case, are the same. Therefore, there is a clear finding that the petitioner has committed domestic violence.

13. The three decisions relied upon by Mr. Agha speak of a

situation where there was no finding of domestic violence recorded by the Courts and despite the absence of such finding, monetary reliefs were granted to the opposite parties or the aggrieved parties. In this case, there is a clear finding that the petitioner has indulged in domestic violence and therefore, the principles laid down in the said three Judgments are not at all applicable.

14. The Appellate Court has taken into consideration the circumstance that two of the rooms are rented and it is based on this circumstance that the directions have been issued for payment of only ₹3,000/- to the wife and ₹1,000/- each to the two children.

15. Though the two children by now have indeed attained the age of 18 and 23, there is no material on record to suggest that they are in a position to reasonably provide for themselves. In case the maintenance amount awarded to them is now to be excluded, it is almost certain that the petitioner's wife Sampadha will have to provide for them, inter alia, from out of the amount of ₹3,000/- which the Appellate Court has directed the petitioner to pay to her. This will aggravate economic abuse, because, the mother, is not likely to deprive her children of subsistence to the extent she can afford it. For this reason, it is not possible to accept Mr. Agha's contention that the maintenance awarded to the children should at least be excluded because by now they have attained the majority.

16. If the contention of Mr. Agha is to be accepted, then, in the exercise of revisional jurisdiction, this Court will have to enhance the

monetary relief in favour of the wife by at least another ₹2,000/-. The petitioner will then have to pay an amount of ₹5,000/- per month to effectively maintain his family, now that there is a finding that the petitioner has indulged in economic abuse and consequently domestic violence.

17. There is material on record that the petitioner earns approximately ₹18,000/- per month. No doubt, the petitioner, must be taking care of his aged mother and must be paying the rent of the new premises. As of date, the petitioner has not applied for making of any residence order, which liberty petitioner always has in terms of the law. However, as of now, hardly one-third of his income is required to be spent towards maintaining three of his family members, and therefore, there is nothing unreasonable or disproportionate in the relief granted by the Appellate Court in this matter.

18. For all the aforesaid reasons, this revision is dismissed. There shall be no order as to costs.

19. Miscellaneous applications, if any, do not survive and are also disposed of.

M. S. SONAK, J.

jfd/-