

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.948 OF 2014

Smt. Jayashree Giresh Devre .. Petitioner

Vs.

Giresh Roopchand Devre & Ors. .. Respondents

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Mr. Adaba Khan with Mr. Rohit Jadhav i/b Ms. Neha Bhosale
for the petitioner.

Mr. Rajesh S. Jadhav for respondent Nos.1, 3 and 4.

Mr. Y.Y. Dabake, A.P.P. for the State.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 6TH APRIL, 2021.

P.C:-

1. By the impugned order dated 26/11/2013, the Additional Sessions Judge, Nashik reversed the orders passed by JMFC, Kalwan on 04/04/2013 in Criminal Misc. Application No.62 of 2012. The said Application was instituted by the petitioner before the JMFC alleging domestic violence and the harassment meted out to her and praying that she as well as her son should

be paid an amount of maintenance and rent for the residential premises and together claiming an amount of Rs.8,000/-.

The JMFC granted the said Application on 04/04/2013 and directed that by way of interim maintenance, the respondent shall pay an amount of Rs.1,700/- per month to the petitioner as well as her minor son. Further, a direction was also issued to pay to the petitioner, an amount of Rs.500/- towards rent. It was also observed that the said order was made as an interim arrangement since a dispute between the same parties was pending in the same court as regards the earning of the petitioner and liberty was granted to make appropriate application in the said proceedings. Further, the matter was also referred for mediation.

2. It is this order which is reversed by the Additional Sessions Judge, Nashik on the premise of an erroneous understanding of the provisions of the Protection of Women from Domestic Violence Act, 2005 (for short, “**DV Act**”) holding that the DV Act is not retrospective and since the same came into force on 26/10/2006, the incident narrated in the application, which occurred prior to that date, will not be covered by the provisions of the DV Act. Further, a cursory reference has been made that there is no indication in the Application pointing out the domestic violence and only vague allegations are made that she was threatened telephonically.

3. The Additional Sessions Judge has erred on both the aspects. On perusal of the application, it is clear that the petitioner has narrated the incidents of cruelty meted out to her, which would clearly fall within the parameters of the violence, she being a wife of the respondent. On the second aspect that the D.V. Act is not retrospective in its effect is concerned, the DV Act has been enacted in the year 2005 aimed to provide for more effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family. The definitions of various terms will have to be kept in mind while considering the objectives of the enactment of the DV Act. The term ‘aggrieved person’ is defined in Section 2(a) of the DV Act which reads as under:

2. Definitions. - *In this Act, unless the context otherwise requires, -*

(a) “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

4. Further Section 2(f) defines the term ‘domestic relationship’ as a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a

relationship in the nature of marriage, adoption or are family members living together as a joint family. The term ‘domestic violence’ is defined in Section 3 of the DV Act.

5. Taking into consideration the objectives of the enactment of DV Act, the understanding of the Additional Sessions Judge, Nashik that it will not cover the incidents of domestic violence, which had occurred prior to coming into effect of the DV Act is on an erroneous reading of the provisions of the DV Act. In 2012 itself, Hon’ble Apex Court in the case of **V.D. Bhanot v. Savita Bhanot**, reported in **(2012) 3 SCC 183**, has clarified the object of the enactment and has ruled that the protection provided under Sections 18 to 20 of the DV Act would entail the conduct of the parties prior to coming into force of the DV Act to be taken into consideration while passing the order. The Hon’ble Apex Court in paragraphs 8 and 12 of the said judgment held as under:

“8. After considering the constitutional safeguards under Article 21 of the Constitution, vis-a-vis, the provisions of Sections 31 and 33 of the PWD Act, 2005, and after examining the statement of objects and reasons for the enactment of the PWD Act, 2005, the learned Judge held that it was with the view of protecting the rights of women under Articles 14, 15 and 21 of the Constitution that the Parliament enacted the PWD Act, 2005, in order to provide for some effective protection of rights guaranteed under the Constitution to women, who are

victims of any kind of violence occurring within the family and matters connected therewith and incidental thereto, and to provide an efficient and expeditious civil remedy to them. The learned Judge accordingly held that a petition under the provisions of the PWD Act, 2005, is maintainable even if the acts of domestic violence had been committed prior to the coming into force of the said Act, notwithstanding the fact that in the past she had lived together with her husband in a shared household, but was no more living with him, at the time when the Act came into force.

12. *We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005.”*

6. In the light of the said authoritative pronouncement, the order passed by the Additional Sessions Judge cannot sustain and, is liable to be quashed and set aside, and is accordingly quashed and set aside. At the same time, an important aspect of the matter also cannot be ignored being the Additional Sessions Judge did not take into consideration the merits of the matter barring the sketchy observations made in paragraph 9 of the

order. As far as the amount of maintenance, which had been granted by the Magistrate and the amount directed to be paid towards rent would have to be re-determined by taking into account the fact that the petitioner is already granted maintenance under Section 125 of the Code of Criminal Procedure (for short, “**Cr.P.C.**”). While granting the monetary relief under Section 20 of the DV Act, the court is bound to take into consideration maintenance amount, if any, granted under Section 125 of the Cr.P.C. In such circumstances, it would be appropriate to remit the matter to the Additional Sessions Judge, Nashik to re-determine the amount of maintenance in an appeal filed by respondent since the earlier rejection is on the non applicability of the provisions of the DV Act, which dismissal has been quashed and set aside. The Additional Sessions Judge is directed to decide the said appeal within a period of three months from today. Needless to state that the Sessions Judge shall take into consideration all contentions of the petitioner and the respondent on merits while deciding the appeal.

7. The Writ Petition is disposed of in the aforestated terms.

SMT. BHARATI DANGRE, J.