

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 370 OF 2020

- 1) Kalpesh s/o Dilip Neve,
Aged 35 years, Occupation - Service,
R/o Tata Technologies, 25, Rajiv
Gandhi Infitech Park, Hinjewadi,
Pune.
- 2) Dilip s/o Bhaskar Neve,
Aged about 67 years,
Occupation – Pensioner,
- 3) Sau. Meenatai @ Dipali Diliprao Neve,
Aged 60 years, Occupation – Household,

Nos. 2 and 3 R/o Jai Nagar, Near
Omkareshwar Temple, Jalgaon(Kh.),
Tq. & District Jalgaon.

.... **PETITIONER**

VERSUS

Sonali w/o Kalpesh Neve,
Aged about 34 years, Occ. - Service,
R/o C/o. Nandkishor Bhaskar Neve,
Shri-Krupa, Ward No.13, Near
Chandak School, Kalipura, Malkapur,
Tq. Malkapur, District – Buldhana-443101.

.... **RESPONDENT**

Mr. A.J. Thakkar, Counsel for the petitioners,
Mr. Rajnish Vyas, Counsel for the respondent.

CORAM : ROHIT B. DEO, J.
DATED : 18th JANUARY, 2021

ORAL JUDGMENT :

Heard. With consent, the petition is finally heard at the admission stage.

2. The petitioners are aggrieved by the judgment dated 18-2-2020 rendered by the Additional Sessions Judge, Malkapur in Regular Criminal Appeal 15/2015 whereby the learned Sessions Judge set aside the judgment and order dated 22-4-2015 rendered by the learned Magistrate in P.W.D.V.C. 37/2014 and remitted the matter for fresh decision on the issue of territorial jurisdiction after affording the rival parties opportunity of adducing evidence.

3. The sole respondent-Mrs. Sonali approached the learned Magistrate under the Protection of Women from Domestic Violence Act, 2005 ('DV Act' for short). The petitioners were arraigned as respondents in the domestic violence proceedings, and on appearing in response to the summons, objected to the territorial jurisdiction of the learned Magistrate. The objection found favour with the learned Magistrate who returned the application to Mrs. Sonali for presentation before the appropriate Court.

4. The learned Sessions Judge noted the decision of this Court in *Advocate Ramesh Bhutada and other v. State of Maharashtra, Criminal Writ Petition 531/2010 decided on 13-06-2011*, and particularly the observation that although vital question as to the jurisdiction of the Court was raised, the parties were not called upon to tender evidence in support of their rival contentions and were merely heard on the basis of application and say. The learned Sessions Judge then referred to the articulation of the Supreme Court in *Mst. Jagir Kaur and another v. Jaswant Singh, 1963(2) Cri.L.J. 418*, the relevant observations in which decision read thus :

"6. The first word is "resides". A wife can file a petition against her husband for maintenance in a Court in the District where he resides. The said word has been subject to conflicting judicial opinion. In the Oxford Dictionary it is defined as : "dwell permanently or for a considerable time; to have one's settled or usual abode; to live in or at a particular place". The said meaning, therefore, takes in both a permanent dwelling as well as a temporary living in a place. It is, therefore, capable of different meanings, including domicile in the strictest and the most technical sense and a temporary residence. Whichever meaning is given to it, one thing is obvious and it is that it does not include a causal stay in, or a flying visit to, a particular place. In short, the meaning of the word would, in the ultimate analysis, depend upon the context and the purpose of a particular statute. In this case the context and purpose of the present statute certainly do not compel the importation of the concept of domicile in its technical sense. The purpose of the statute would be better served if the word "resides" was understood to include temporary residence. The juxtaposition of the words "is" and "last resided" in the sub-Section also throws light on the meaning of the word "resides". The word "is", as we shall explain later, confers jurisdiction on a Court on the basis of a

causal visit and the expression "last resided", about which also we have something to say, indicates that the Legislature could not have intended to use the word "resides" in the technical sense of domicile. The word "resides" cannot be given a meaning different from the word "resided" in the expression "last resided" and, therefore, the wider meaning fits in the setting in which the word "resides" appears. A few of the decisions cited at the Bar may be useful in this context.

7. *In Santpoornam v. N. Sundaregan, 1952-2 Mad LJ 537 : (AIR 1953 Mad 78), it was held that the word "resides" implied something more than a brief visit but not such continuity as to amount to a domicile. In Khairunissa v. Bashir Ahmed ILR 53 Bom 781; (AIR 1929 Bom 410), on a consideration of the relevant authorities it was pointed out that a casual or a flying visit to a place was excluded from the scope of the word "resides". A full Bench of the Allahabad High Court, in Arthur [Flowers v. Minnie Flowers](#) ILR 32 All 203, expressed the view that a mere casual residence in a place for a temporary purpose with no intention of remaining was not covered by the word "resides". In [Balakrishna v. Sakuntala Bai](#) AIR 1942 Mad 666 it was held that the expression "reside" implied something more than "stay" and implied some intention to remain at a place and not merely to pay it a casual visit. In Charan Das v. Surasti Bai AIR 1940 Lah 449, it was held that the sole test on the question of residence was whether a party had animus manendi, or an intention to stay for an indefinite period, at one place; and if he had such an intention, then alone could he be said to "reside" there.*

8. *The decisions on the subject are legion and it would be futile to survey the entire field. Generally stated no decision goes so far as to hold that "resides" in the sub-section means only domicile in the technical sense of that word. There is also a broad unanimity that it means something more than a flying visit to or a casual stay in a particular place. They agree that there shall be animus manendi or an intention to stay for a period, the length of the period depending upon the circumstances of each case. Having regard to the object sought to be achieved, the meaning implicit in the words used, and the construction placed by decided cases thereon, we would define the word "resides" thus : a person resides in a place if he through choice makes it his abode permanently*

or even temporarily ; whether a person has chosen to make a particular place his abode depends upon the facts of each case. Some illustrations may make our meaning clear : (1) A, living in a village, goes to a nearby town B to attend a marriage or to make purchases and stays there in a hotel for a day or two. (2) A, a tourist, goes from place to place during his peregrinations and stays for a few days in each of the places he visits, A, a resident of a village, who is suffering from a chronic disease, goes along with his wife to a town for medical treatment, takes a house and lives there for about 6 months. (4) A, a permanent resident of a town, goes to a city for higher education, takes a house and lives there, alone or with his wife, to complete his studies. In the first two cases, A makes only a flying visit and he has no intention to live either permanently or temporarily in the places he visits. It cannot, therefore, be said that he "resides" in the places he visits. In the last two illustrations, though A has a permanent house elsewhere, he has a clear intention or animus manendi to make the places where he has gone for medical relief in one and studies in the other, his temporary abode or residence. In the last two cases it can be said that though he is not a domicile of those places, he "resides" in those places.

9. *The cognate expression "last resided" takes colour from the word "resides" used earlier in the sub-section. The same meaning should -be given to the word "resides" and the word "resided", that is to say, if the word "resides" includes temporary residence, the expression "last resided" means the place where the person had his last temporary residence. But it is said that even on that assumption, the expression can only denote the last residence of the person with his wife in any part of the world and that it is not confined to his last residence in any part of India. If the words "where he last resided with his wife" are construed in vacuum, the construction suggested by the learned counsel for the respondent may be correct; but by giving such a wide meaning to the said expression we would be giving extra territorial operation to the [Code of Criminal Procedure](#). [Section 2 \(1\)](#) of the Code extends the operation [of the Code](#) to the whole of India except the States of Jammu & Kashmir; that is to say, the provisions [of the Code](#), including [s. 488\(8\)](#) thereof, have operation only throughout the territory of India, except the States of Jammu & Kashmir. If so, when sub-s. (8)*

of s. 488 of the Code, prescribing the limits of Jurisdiction, speaks of the last residence of a person with his wife, it can only mean his last residence with his wife in the territories of India. It cannot obviously mean his residing with her in a foreign country, for an Act cannot confer jurisdiction on a foreign court. It would, therefore, be a legitimate construction of the said expression if we held that the district where he last resided with his wife must be a district in India.

10. *In In re Drucker (No. 2) Basden, Ex Parte* 1902-2KB 210 the words "or in any other place out of England," in sub-s. (6) of s. 27 of the Bankruptcy Act, 1883, fell to be construed. The words were wide enough to enable a Court in England to order that any person who, if in England, would be liable to be brought before it under the section, shall be examined in any place out of England, including a place not within the jurisdiction of the British Crown. The Court held that the words must be read with some limitation and the jurisdiction conferred by that section does not extend to places abroad which are not within the jurisdiction of the British Crown. Wright, J., rejecting the wider construction sought to be placed on the said words, observed at p. 211 :

"It seems to me that that restriction in prima facie necessary. It is impossible to suppose that the Legislature intended to empower the Court to order the examination of persons in France or Germany.

In Halsbury's Laws of England, Vol. 36, 3rd Edn., at p. 429, it is stated :

"..... the presumption is said to be that Parliament is concerned with all conduct taking place within the territory or territories for which it is legislating in the particular instance, and with no other conduct. In other words, the extent of a statute, and the limits of its application, are prima facie the same."

It may be mentioned that the said observations are made in the context of Parliament making a law in respect of a part of the territory under its legislative jurisdiction. If it has no power at all to make a law in respect of any foreign territory, the operation of the law made by it cannot obviously extend to a country over which it has no legislative control. It is, therefore, clear that S. 488(8) of the Code, when it speaks of a district where a person last resided with his wife, can only

mean "where he last resided with his wife in any district in India other than Jammu & Kashmir."

11. *The third expression is the word "is". It is inserted between the words "resides" and "last resided". The word, therefore, cannot be given the same meaning as the word "resides" or the expression "last resided" bears. The meaning of the word is apparent if the relevant part of the subsection is read. It reads : "Proceedings under this section may be taken against any person in any district where he..... is....." The verb "is" connotes in the context the presence or the existence of the person in the district when the proceedings are taken. It is much wider than the word "resides": it is not limited by the animus manendi of the person or the duration or the nature of his stay. What matters is his physical presence at a particular point of time. This meaning accords with the object of the chapter wherein the concerned section appears. It is intended to reach a person, who deserts a wife or child leaving her or it or both of them helpless in any particular district and goes to a distant place or even to a foreign country, but returns to that district or a neighbouring one on a casual or a flying visit. The wife can take advantage of his visit and file a petition in the district where he is during his stay. So too, if the husband who deserts his wife, has no permanent residence, but is always on the move, the wife can catch him at a convenient place and file a petition under [s. 488](#) of the Code. She may accidentally meet him in a place where he happens to come by coincidence and take action against him before he leaves the said place. This is a salutary provision intended to provide for such abnormal cases. Many illustrations can be visualized where the utility of that provision can easily be demonstrated.*

12. *To summarize : Chapter XXXVI of the Code of Criminal Procedure providing for maintenance of wives and children intends to serve a social purpose. [Section 488](#) prescribes alternative forums to enable a deserted wife or a helpless child, legitimate or illegitimate, to get urgent relief. Proceedings under the section can be taken against the husband or the father, as the case may be, in a place where he resides, permanently or temporarily, or where he last resided in any district in India or where he happens to be at the time the proceedings are initiated.*

5. The learned Sessions Judge noted that Mrs. Sonali placed on record her driving licence, election card, ration card and the voters list demonstrating her residence at Malkapur.

6. Section 27 of the DV Act reads thus :

“27. Jurisdiction.—(1) The Court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which—

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen,
shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made this Act shall be enforceable throughout India.”

7. In the facts of the case, whether Mrs. Sonali resides at Malkapur, permanently or temporarily, would be a question of fact and I, therefore, do not find any error in the course adopted by the learned Sessions Judge. The issue is not concluded either way. The parties are at liberty to adduce evidence on the basis of which the learned Magistrate shall decide whether Malkapur is a place of permanent or temporary residence of Mrs. Sonali.

8. The learned Counsel Mr. A.J. Thakkar for the petitioners did make an effort to persuade me to hold that the temporary residence at Malkapur is ruled out on the basis of Mrs. Sonali's pleadings and, therefore, it was not necessary for the learned Sessions Judge to direct the parties to adduce evidence and that the learned Sessions Judge could have decided the issue in appeal. Lest the parties are prejudiced, I am not inclined to make any decisive observation on the said submission. The pleadings and the implication and effect thereof shall undoubtedly be considered by the learned Magistrate in the context of the evidence which may be adduced.

9. I see no reason to interfere in exercise of extra ordinary jurisdiction under Article 227 of the Constitution of India.

10. The petition is dismissed.

JUDGE

adgokar