

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

CRIMINAL WRIT PETITION NO. 372 OF 2019

PETITIONER :- Sau. Aruna W/o. Omprakash Shukla,
Aged about 37 years, Occ. Household work,
C/o. Subhash Matrudatta Mishra,
R/o. Vidarbha Housing Board Colony,
near three Water Tanks, Gorakshan Road,
Akola, Tq. & Distt. Akola,

...**VERSUS**...

RESPONDENT :- Omprakash S/o. Devanand Shukla,
Aged about 41 years, Occ.- Service,
R/o 42, Maheshwari Apartments,
Shilpa Society, Nagpur.

Shri. C. A. Joshi, Advocate for Petitioner
Shri. A. S. Joshi, Advocate for Respondent.

WITH
CRIMINAL WRIT PETITION NO. 707 OF 2018

PETITIONERS :-

1. Shri. Omprakash Devanand Shukla,
Aged about 40 Yrs., Occ.- Service,
2. Shri. Devanand Ramnidhi Shukla,
(Dead)
3. Smt. Seema Wd/o. Devanand Shukla,
Aged about 60 Yrs., Occu. - Nil,

Both Petitioner Nos. 1 and 3
R/o. 42, Maheshwari Apartment,
Shilpa Society, Nagpur
4. Shri. Jaiprakash Devanand Shukla
Aged about 37 Yrs., Occu. - Service,
R/o. Jawade Plot No. 25, Adarsh
Nagar, Yavatmal.

5. Shri. Surendra Gajadhar Mishra
Aged about 45 Yrs., Occ. - Service,
6. Sau. Varsha Surendra Mishra
Aged about 43 Yrs., Occ. - Household,

Both 5 & 6 R/o. Sambhaji Nagar,
Digras, Distt. Yavatmal.

...VERSUS...

RESPONDENT :-

Sau. Aruna W/o. Omprakash Shukla,
Aged about 37 years, Occ. Service,
R/o. C/o. Subhash Matrudatta Mishra,
Vidarbha Housing Board Colony,
near three Water tank, Gorakshan Road,
Tah. & Distt. Akola, Police Station Khadan,
Akola

Shri. A. S. Joshi, Advocate for Petitioners
Shri. C. A. Joshi, Advocate for Respondent.

WITH
CRIMINAL WRIT PETITION NO. 718 OF 2018

PETITIONERS :-

1. Shri. Omprakash Devanand Shukla,
Aged about 40 Yrs., Occ.- Service,
2. Shri. Devanand Ramnidhi Shukla,
(Dead)
3. Smt. Seema Wd/o. Devanand Shukla,
Aged about 60 Yrs., Occu. - Nil,

Both Petitioner Nos. 1 and 3
R/o. 42, Maheshwari Apartment,
Shilpa Society, Nagpur
4. Shri. Jaiprakash Devanand Shukla
Aged about 37 Yrs., Occu. - Service,
R/o. Jawade Plot No. 25, Adarsh
Nagar, Yavatmal.

5. Shri. Surendra Gajadhar Mishra
Aged about 45 Yrs., Occ. - Service,
6. Sau. Varsha Surendra Mishra
Aged about 43 Yrs., Occ. - Household,

Both 5 & 6 R/o. Sambhaji Nagar,
Digras, Distt. Yavatmal.

...VERSUS...

RESPONDENT :-

Sau. Aruna W/o. Omprakash Shukla,
Aged about 37 years, Occ. Service,
R/o. C/o. Subhash Matrudatta Mishra,
Vidarbha Housing Board Colony,
near three Water tank, Gorakshan Road,
Tah. & Distt. Akola, Police Station Khadan,
Akola

Shri. A. S. Joshi, Advocate for Petitioners
Shri. C. A. Joshi, Advocate for Respondent.

CORAM : MANISH PITALE, J.

RESERVED ON : 17.07.2021.

PRONOUNCED ON : 27.07.2021.

JUDGMENT

1. Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. These three writ petitions arise out of a common judgment and order dated 04.05.2018 passed by the Sessions Court at Akola. By the said common judgment and order, the Sessions Court partly allowed the appeal of the petitioner in Writ Petition No.372/2019 i.e. Aruna w/o Omprakash Shukla and dismissed the appeal of the petitioner in Writ Petition Nos. 707/2018 and 718/2018 i.e. Omprakash S/o Devanand Shukla and others.

3. The said petitioner Aruna w/o Omprakash Shukla filed an application under the provisions of The Protection of Women of Domestic Violence Act, 2005 (herein after referred to as D.V.Act) for various reliefs. The said application bearing Miscellaneous Criminal Case No.1314/2012 was partly allowed by the Court of 9th Judicial Magistrate First Class, Akola, directing the said Omprakash s/o Devanand Shukla to pay an amount of Rs.3,000/- per month towards maintenance and Rs.2,000/- per month as house rent to his wife i.e. Aruna w/o Omprakash Shukla. The prayer of the wife for grant of compensation and return of Stridhan and household articles was rejected.

4. Both the wife and husband were aggrieved by the said order of the Magistrate and they filed appeals before the Sessions Court at Akola. By the impugned judgment and order, the Sessions Court partly allowed the appeal of the wife by enhancing the monthly maintenance to Rs.4,000/-, while maintaining the amount payable towards monthly rent. Additionally, the husband was directed to pay an amount of Rs.50,000/- to his wife towards compensation. The appeal filed by the husband was dismissed.

5. Aggrieved by the said common judgment and order present writ petitions were filed in which this Court issued notices.

6. Mr. C.A. Joshi, learned counsel appearing for the petitioner in Writ Petition No.372/2019, who is respondent in the other two writ petitions, submits that the quantum of maintenance granted to the wife deserves to be enhanced further and that the Courts below did not appreciate the evidence on record in the correct perspective.

7. By inviting attention to the material placed on record before the courts below, it was submitted that the monthly maintenance amount ought to have been higher and further that the quantum of compensation granted should also have been enhanced to a higher figure.

8. On the other hand, Shri Anand S. Joshi, learned counsel appearing for petitioners in Writ Petition Nos. 707/2018 and 718/2018, submitted that the Sessions Court erred in dismissing the appeal of the husband and partly allowing the appeal of the wife. It was submitted that the petitioner was constrained to file two writ petitions, in the aforesaid facts and circumstances. It was further submitted that on facts the courts below had erred in granting amount towards monthly maintenance and rent, as also towards compensation, because the financial status of the husband was not properly appreciated by the Courts below. It was submitted that when the Sessions Court itself had found that the husband was earning a meager salary of about Rs.15,000/-, the amount of monthly maintenance and rent granted by the Sessions Court was not sustainable. It was further

submitted that the Magistrate had found that the wife had not placed on record any evidence to support her prayer for grant of compensation, thereby rejecting the aforesaid prayer, yet, the Sessions Court granted relief of compensation and fixed the amount at Rs.50,000/- without any basis. It was submitted that the wife had never filed any police complaint nor had she undergone any medical examination to demonstrate injuries suffered, in order to support her prayer for grant of compensation.

9. Apart from this, the learned counsel appearing for the husband raised a question of law on the aspect of limitation, in order to claim that the Magistrate ought to have thrown out the complaint as being barred by limitation. The learned counsel for the husband relied upon the provisions of D.V. Act, particularly Sections 28 and 31 thereof, read with Section 468 of the Cr.P.C to claim that the complaint was barred by limitation. By placing reliance on Section 468(2)(b) of the Cr.P.C., it was submitted that when the wife (complainant) herself admitted that the complaint was filed after one year of the separation of the couple, the complaint was beyond the period of limitation of one year and

therefore, it ought to have been dismissed, as such. The learned counsel for the husband relied upon judgment of Hon'ble Supreme Court in the case of *Inderjit Singh Grewal Vs. State of Punjab* (2011) 12 SCC 588.

10. Before dealing with the contentions raised on behalf of the rival parties as regards the quantum of maintenance, house rent and compensation payable to the wife, it would be appropriate to first deal with the question of law raised on behalf of the husband, pertaining to limitation for filing complaint under the D.V Act, 2005.

11. According to the learned counsel appearing for the husband, since Sections 28 and 31 of the D.V Act, referred to applicability of the provisions of the Cr.P.C., Section 468 thereof assumes significance. By inviting attention to provisions of the D.V Act, it was stated that for an offence under the said provisions punishment of imprisonment extending up to one year is provided. On this basis, it was submitted that Section 468 (2)(b) of the Cr.P.C. specifically lays down limitation period of one year

for taking cognizance of an offence which is punishable with imprisonment for a term not exceeding one year. Since Section 31 of the D.V. Act pertains to breach of a protection order or an interim protection order, necessarily relating to applications filed under the provisions of the D.V. Act by the aggrieved person, it is contended that the limitation period of one year would apply.

12. It is specifically stated that the wife herself in the complaint claimed that on 03.02.2011, she last resided with the husband and thereafter, she was forced to live separately. It was then stated that the complaint under the provisions of the D.V. Act was filed on 17.10.2012, which was beyond the period of one year from 03.02.2011. On this basis it was claimed that the complaint was hit by limitation and that therefore, the orders of the Magistrate as well as the Sessions Court were unsustainable.

13. Learned counsel placed specific reliance on the judgment of the Supreme Court in the case of *Inderjit Singh Grewal Vs. State of Punjab (supra)*. In the said judgment, the Hon'ble Supreme Court had observed that a contention raised on

behalf of the appellant before the Hon'ble Supreme Court to the effect that in view of Section 468 of the Cr.P.C. the complaint under the D.V. Act could be filed only within a period of one year from the date of the incident appeared to be preponderous, in view of the provisions of Sections 28 and 32 of the D.V. Act read with Rule 15 (6) of the Rules framed under the said Act. A perusal of Sections 28 and 31 of the D.V. Act would show that the proceedings under Sections 12, 18 to 23 and Section 31 of the D.V. Act are governed by the provisions of the Cr.P.C. There can be no dispute about the fact that for an offence under Section 31 of the D.V. Act, the accused can be punished with imprisonment which may extend to one year.

14. Rule 15(6) of the aforesaid Rules pertains to applicability of Cr.P.C. when charges are framed under Section 31 of the D.V. Act. The question for consideration is, as to whether the complaint in the present case filed by the wife can be said to be hit by limitation as provided under Section 468 of the Cr.P.C.

15. In the case of *Inderjit Singh Grewal Vs. State of*

Punjab (supra), the Hon'ble Supreme Court was dealing with a case where the husband and wife were already divorced in pursuance of a decree of divorce by mutual consent passed by the competent Court. The complainant in that case claimed that the decree of divorce by mutual consent was obtained by fraud by the husband, in respect of which she had approached the police for registration of an offence, but the police had refused to register any criminal case. The complainant further claimed that she had been living together with the husband even after divorce and in such a factual backdrop she had made allegations of harassment and abuse against the husband. The Hon'ble Supreme Court found that in the facts of the said case, initiation of proceedings by the wife under the D.V. Act amounted to abuse of the process of law and accordingly, allowed the appeal of the husband and dismissed the complaint. It is in this backdrop that the Hon'ble Supreme Court recorded one of the contentions raised of behalf of the husband pertaining to limitation and made an observation that such a contention appeared to be preponderous, in view of Sections 28 and 32 of the D.V. Act read with rule 15 (6) of the aforesaid Rules.

16. It needs to be appreciated whether the said judgment lays down the proposition that a complaint under the provisions of D.V. Act can be filed, subject to limitation of one year, in view of Section 468 of the Cr.P.C. In this context, another judgment of the Hon'ble Supreme Court becomes relevant, which is delivered in the case of *Krishna Bhattacharjee Vs. Sarathi Choudhury and another (2016) 2 SCC 705*. In this judgment, the Hon'ble Supreme Court has taken note of the aforesaid earlier judgment in the case of *Inderjit Singh Grewal Vs. State of Punjab (supra)* and thereupon it is found that while considering complaints under the D.V. Act, the concept of continuing cause of action needs to be applied. In the said case, a contention regarding limitation was raised in the backdrop of prayer of the aggrieved person (wife) for return of Stridhan. The Hon'ble Supreme Court after relying upon earlier judgments, held that a continuing offence is one which is susceptible of continuance and is distinguishable from one which is committed once and for all. It was found that retention of Stridhan by the husband and his family members was a continuing offence, so long as it was covered under the expression of "economic abuse" as defined under Section 3 of the D.V. Act,

pertaining definition of “Domestic Violence”. On this basis, it was held that the complaint filed by the wife could not be thrown out on the ground of limitation, by applying Section 468 of the Cr.P.C.

17. It would be necessary to appreciate as to the offence to which Section 31 of the D.V. Act applies. The said provision specifies punishment with imprisonment to the extent of one year, when there is breach of a protection order or an interim protection passed under the provisions with the D.V. Act. Thus, the stage of imposing punishment for a breach of a protection order arises after a protection order is passed and the breach thereof is proved. Section 28 of the D.V. Act provides for applicability of the provisions of the Cr.P.C. in respect of proceedings initiated under Sections 12, 18 to 23 and 31 of the D.V. Act. The Hon’ble Supreme Court in the case of *Krishna Bhattacharjee Vs. Sarathi Choudhury and another* (supra) took into consideration the objects and reasons of the D.V. Act and also emphasized on the approach that courts need to adopt while considering cases under the D.V. Act. It was stated by the Hon’ble Supreme Court in paragraph 8 of the said judgment as follows:-

“In our prefatory note, we have stated about the need of sensitive approach to these kinds of cases. There can be erroneous perception of law, but as we find, neither the learned Magistrate nor the appellate court nor the High Court has made any effort to understand and appreciate the stand of the appellant. Such type of cases and at such stage should not travel to this Court. We are compelled to say so as we are of the considered opinion that had the appellate court and the High Court been more vigilant, in all possibility, there could have been adjudication on merits. Be that as it may.”

18. In the present case, the Court is concerned with the complaint filed by the wife under Section 12 and other aforementioned provisions of the D.V. Act. The wife claims that she was harassed and abused and that she also suffered economic abuse at the hands of the husband and his relatives. She claims that she has suffered “domestic violence” as defined in Section 3 of the D.V. Act. She specifically seeks redressal for such abuse and she has also claimed return of articles gifted to her by her parents and other relatives, including golden and silver ornaments. In fact, the wife has claimed compensation to the tune of Rs.10 Lakh in the said complaint. There is no doubt about the fact that in the complaint itself she says that she was driven out on 03.02.2011 by her husband and his relatives from the matrimonial house. The

complaint admittedly is filed on 17.10.2012.

19. It is in this backdrop that the concept of continuing cause of action and continuing offence needs to be appreciated from the point of view of the aggrieved person i.e. wife. Certain grievances for which relief has been specified in the D.V. Act pertain to the aggrieved person being deprived of maintenance, residence, or shared household, return of articles, right to reside in shared household and protection orders in that backdrop. The definition of Domestic Violence in Section 3 of the D.V. Act is wide ranging and includes physical abuse, sexual abuse and verbal and emotional abuse, as also economic abuse. The purpose of enactment of D.V. Act is to provide remedies to such aggrieved persons, apart from proceedings that an aggrieved person may initiate under existing civil and criminal laws.

20. In the present case, perusal of the contents of the complaint would show that the wife has not only stated incidents of physical and emotional abuse but she has also indicated the economic abuse that she has suffered. The wife has also

specifically prayed for return of articles i.e. Stridhan. In the said judgment in the case of *Krishna Bhattacharjee Vs. Sarathi Choudhury and another (supra)*, the Hon'ble Supreme Court has specifically held that the concept of continuing offence gets attracted from the date of deprivation of Stridhan and that therefore, an application in that context would have to be entertained and it cannot be thrown out on the ground of limitation. This Court is of the opinion that the definition of domestic violence under Section 3 of the D.V. Act shows that depriving an aggrieved person of not only Stridhan but also shared household, maintenance, alienation from assets, banks lockers etc, prevention from entering place of employment of the aggrieved person, would all be covered, under the concept of continuing offences. Therefore, merely because the wife in the present case was, according to her, driven out on 03.02.2011 and the complaint was filed after one year i.e. on 17.10.2012, it cannot be said that the complaint is barred by limitation. The concepts of continuing cause of actions and continuing offences would apply and the contention raised on behalf of the husband relying upon Section 468 Cr.P.C. cannot be accepted. Thus, it is

found that the complaint of the wife cannot be thrown out on the ground of limitation, despite applicability of the Cr.P.C. as per Section 28 of the D.V. Act.

21. On the question of merits of the impugned order, the wife has claimed further enhancement of amounts payable towards maintenance and rent, as also compensation, while the husband has claimed that no such amount was payable. The impugned order passed by the Sessions Court shows that while enhancing amount payable towards maintenance from Rs.3,000/- to Rs.4,000/- per month, the Court took into consideration salary slip of the husband. It was found that while the gross salary was Rs.15,000/-, the net salary was Rs.14,009/-. The amount payable towards rent was maintained at Rs.2,000/-, thereby showing that after enhancement of the amount payable towards maintenance, the husband is required to pay a total amount of Rs.6,000/- per month to the wife. Considering that the net salary was found to be Rs.14,009/- per month, this Court is of the opinion that the direction to pay Rs.6,000/- per month to the wife cannot be said to be unreasonable. No case is made out for further enhancement

of amount towards maintenance. Learned counsel appearing for the husband sought to rely upon a pay slip of November, 2020. A perusal of the same would show that the total earnings of the husband are shown to be Rs.17,788/- while the net pay is Rs.16,730/- per month. This document further demonstrates that the approach adopted by the Sessions Court cannot be said to be erroneous.

22. Insofar as the amount towards compensation fixed at Rs.50,000/- is concerned, this Court is not impressed by the contention raised on behalf of the husband that since the wife did not place on record any material to show any physical abuse or proof of having filed any police complaint, she did not deserve to be paid any compensation. In cases of domestic violence, it is often found that the aggrieved person, in this case the wife, does not immediately rush to the police when inflicted with physical, mental and physiological and economic abuse. Even if such persons suffer injuries, they would not necessarily keep medical records of the same and it cannot be said that only because no medical documents were produced, the wife in the present case,

was not entitled for compensation. It has come on record that the wife stated about the abuse suffered in the complaint itself, as also the evidence led on her behalf. In this situation, it cannot be said that the Sessions Court erred in reversing the order of the Magistrate while granting compensation of Rs.50,000/- to the wife. This Court refuses to interfere with the quantum, while exercising writ jurisdiction.

23. In so far as, the contentions raised on behalf of wife for further enhancement of amount payable towards maintenance, rent and compensation, considering the pay slip placed on record, this Court is of the opinion that a case for further enhancement of compensation is not made out.

24. In view of the above, all the three writ petitions are dismissed and the common impugned judgment and order of the Sessions Court is upheld.

JUDGE

MANISHA