

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.46 OF 2022

Mr. Vinit Vilas Vaidya
Age.36 years, Occ. Advocate,
R/o. At B6/802, Park Infinia,
Kumar Properties, Phursungi,
Pune-412 308, Maharashtra.

.. Applicant
[original
respondent]

Versus

1. Mrs. Manjiri Vinit Vaidya
Age.34 years, Occ. Service,
Permanent Address: N-5,
Gulmohar Colony, CIDCO,
E-30, 01, Aurangabad-431003.
Present Address R/o. C/o. Mangesh
Rajaram Paithankar, Near Post Office
Verul, Tq. Khultabad, Dist. Aurangabad.
Maharashtra – 431 102.

.. Respondents
[original
applicants]

2. Manasvi D/o. Vinit Vaidya,
Age. 07 years, Occ. Nil,
U/h. Through Resp. No.1 being Guardian,
R/o. As above.

Smt. Ratna R. Mane, Advocate for the applicant.
Mr.R.D. Biradar, Advocate for respondent Nos.1 and 2.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 06.10.2022
PRONOUNCED ON: 10.11.2022

J U D G M E N T :-

01. This revision application is filed by husband/original non applicant challenging judgment and order dated 16.12.2021 passed by the learned Additional Sessions Judge-3, Aurangabad, in PWDVA Appeal No.78 of 2019 dismissing his appeal. The appeal was preferred against an order dated 17.03.2018 passed by the learned 15th Judicial Magistrate, First Class, Aurangabad in application bearing PWDVA No.434 of 2016 directing the applicant-husband to pay maintenance of Rs.10,000/- per month to wife Manjiri and Rs.3000/- per month to daughter Manasvi from the date of application as per section 20 of the Protection of Women from Domestic Violence Act [for short “the Act”]. The applicant is further directed to pay Rs.2000/- per month to wife towards rent as per section 19 of the Act.

02. Initially the parties were referred to mediation, however, the mediation report shows that the mediation is failed.

03. The applicant-husband is a practicing advocate. It is his case that though the proceeding is taken under the Act, without recording any finding about the domestic violence, relief is granted under sections 20 and 19 of the

Act. It is further his case that there is no proof of his income on record. The entire proceeding is taken out of false allegations. There is no specific incident of domestic violence pleaded and proved and as such the proceeding itself was not maintainable. The respondent-wife is in habit of filing false complaints. She had even filed a complaint for the offence punishable under section 306 r/w section 34 of the Indian Penal Code [for short “the IPC”] , wherein discharge application was filed in the Sessions Court. On rejection of the discharge application, the applicant had approached this Court by filing Criminal Revision Application No.120 of 2019 and the same was allowed by order dated 24.07.2019. Against the order passed by this Court, even SLP was preferred and that also came to be rejected. He further stated that even case under section 498-A of the IPC was filed against the applicant and his relatives. The case ended in acquittal. However, the applicant was held guilty only for the offence punishable under section 323 of the IPC and he was given benefit of the Probation of Offenders Act. Against said judgment, an appeal is pending. It is, thus, prayed that the impugned judgment and order deserves to be quashed and set aside. The applicant also further stated that though initially he was in service, however, because of the domestic reasons, he was required to resign and now he has started his practice as an advocate. Since

he has recently started practice, he is not getting income and on this count also he submitted that he is not in a position to pay the amount as directed by the learned Courts below.

04. As against this, the respondent-wife submitted that the applicant on his own, resigned from the service and got himself enrolled as an advocate. However, he is still doing a job and earning handsomely. She points out that there is acquittal under section 498-A of the IPC, still the Court has held applicant guilty of an offence punishable under section 323 of the IPC. The respondent further submits that the income of the applicant is more than Rs.20 lakhs per year.

05. Heard the parties at length. From the record, it is seen that there is specific finding recorded from the cross-examination that there was incident of quarrel between the applicant and the respondent. In the cross, the applicant also stated that the parents of the respondent-wife had been to the house of the applicant and there was discussion in respect of the incident of quarrel. It is clear from the record that the complaint under section 306 of the IPC was filed by the respondent-wife in respect of suicide by her father,

namely, Vijay Paithankar, who died due to drowning in water. She has alleged that it is only because of the behavior of the applicant, father of the respondent committed suicide and the applicant and his relatives should be punished. However, considering every aspect in that case, this Court was pleased to discharge the applicant. Though it cannot be held to be an abetment of suicide by father of the respondent, but it can be a reason to commit suicide.

06. What comes further from the record is that the husband and his parents were prosecuted for offences punishable under section 498-A, 325, 323, 504 and 506 r/w 34 of the IPC. It is held by the learned JMFC that the husband is guilty of the offence punishable under section 323 of the IPC and this finding is not yet set aside. Thus, as on today it will have to be taken that some incident had taken place between husband and wife, which would certainly fall under the definition of domestic violence. This Court finds that the learned Sessions Court has rightly held that the incident of domestic violence had taken place in the year 2016. There are at least two incidents dated 27.03.2016 and 10.04.2016, which are taken to have been proved. This being a finding of fact, in the limited jurisdiction available under section 397

and 401 of the Cr.PC., this Court need not interfere with the same.

07. It is also a case that acquittal under section 498-A of the IPC is under challenge. What remains to be seen further is only the case that is about quantum of the maintenance or the amount granted under section 20 of the Act. While considering the earning of the husband, it is a matter of record that applicant was initially working in TCS company and this fact is not denied by the applicant. Salary of husband is Rs.1 lakh as alleged by his wife. Out of the amount of salary he has to pay Rs.30,000/- p.m. towards rent/installment. He has to pay society maintenance of Rs.2500/-, LIC premium of Rs.3000/- p.m. and Rs.6000/- p.m. towards interest to his mother, who has lend him Rs. 5 lakhs etc. However, in the cross-examination, he admitted that he is getting Rs.67,000/- per month towards salary. But he has to pay various expenses. However, he has not produced salary slip on record to show his actual salary.

08. Though the applicant-husband has submitted that now he has given up a job and now he is practicing as an advocate and his earning is very meager from the practice. What needs to be considered while granting the

maintenance, is the standard of living of the parties. If at the time of marriage his income was assuming to be Rs.67000/-, still looking at the position at the time of marriage, the respondent has accepted the marriage proposal. The parties have led life with certain standard of living. It is certainly expected that the parties would maintain same or better standard of living even in future. It is a case that the applicant has resigned from the company, but now he has joined legal profession. Even considering that he is in practice and not getting much income and still considering standard of living of the couple after marriage, this Court does not find the amount awarded to be very high, on the contrary same is quite reasonable. This Court does not find any reason to vary the same. On facts also no case is made out that the Courts below have committed any mistake while recording finding and coming to conclusion.

09. Considering all above aspects, this Court finds that both the learned Courts below have rightly considered the case based upon the evidence and the documents on record before the Court.

10. The learned Advocate for the respondent i.e. wife has relied upon a judgment delivered by this Court in **Writ Petition No.12861 of 2017** in the

case of **Shri Gaurav Vipin Singhal Vs. Mrs. Anshika G. Singhal**. Considering that judgment, this Court finds that no case is made out by the applicant-husband to cause interference with the impugned judgment and order.

11. In the result, present Criminal Revision Application stands dismissed.

[KISHORE C. SANT, J.]