

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

CRIMINAL REVISION APPLICATION NO.100 OF 2018

1. Nilesh Yohan Tambe,
Age : 35 years, Occu. Labour,
2. Yohan S/o Gangadhar Tambe,
Age : 64 years, Occu. Retired,
3. Padma Yohan Tambe,
Age : 52 years, Occu. Household,
4. Deepa @ Dipti Yohan Tambe,
Age : 30 years, Occu. Household,

All R/o Kedgaon, Tq. Ahmednagar,
District Ahmednagar.

... Applicants.

Versus

Sunita Nilesh Tambe,
Age : 33 years, Occu. Household,
R/o. C/o. Usha Bhingardive,
Savedi, Gavthan, Savedi,
Taluka & District Ahmednagar.

... Respondent

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Advocate for Applicants : Mr. Awasarmol Rahul.
Advocate for Respondent : Mr. More Abhijit S.
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CORAM : S. G. MEHARE, J.

RESERVED ON : 13.07.2022

PRONOUNCED ON : 01.08.2022

ORDER :-

1. The husband and in-laws of the respondent have preferred the revision under Section 397 of the Criminal

Procedure Code against the order granting maintenance passed by the learned Judicial Magistrate First Class (7th Court), Ahmednagar, dated 08.11.2016 in Miscellaneous Criminal Application No.1082 of 2014 and the judgment and order passed by the learned Additional Sessions Judge, Ahmednagar in Criminal Appeal No.215 of 2016 dated 19.01.2018.

2. The facts of the case, in brief, are that applicant No.1 married to respondent on 14.09.2012 as per the Christian rites and customs. After the marriage, the respondent went to cohabit with her husband in the family of her in-laws. After some days, the applicants started harassing the respondent because her parents paid less dowry in the marriage. Sufficient gift articles were given to the applicants for the marriage, but they were not satisfied. They were harassing her to bring Rs.1,00,000/- from her parents. She has given the specific incidents of driving her away from the house. She tolerated the ill-treatments with the hope that a day would come in her life and everything would be settled. The report was also lodged with the Woman Cell, but the dispute could not be settled. The applicants drove her away on 04.05.2013. Applicant No.1 has also filed a proceeding for divorce under Section 10(a) of the Divorce Act. In that proceeding, it was agreed that the

applicant would pay one-time maintenance of Rs.1,00,000/-, but he did not pay.

3. Applicant No.1 does the business of making doors and windows and fixing glass. He earns Rs.25,000/- to Rs.30,000/- per month. Her father-in-law is a retired Government servant. He also gets a monthly pension of Rs.25,000/- to Rs.30,000/-. The applicants have committed domestic violence. She is not able to maintain herself. Therefore, she filed an application under the Protecting of women from Domestic Violence Act 2005 (Domestic violence act, for short) and claimed the maintenance of Rs.10,000/- per month from all the applicants.

4. Applicants have a defence that the allegations of harassment for dowry are false. The applicant went to her house on 16.09.2012, but she did not return for eight (8) days. Her mother-in-law went to fetch her, but she quarreled with them on the ground that a blessing ring was not given to her after marriage. She used to stay with her mother, saying that she was unwell. Thereafter, she again came to the house of the applicants. But she was searching for reasons to go to her mother. She was avoiding the applicants. She was saying that she did not want to stay with them. Nobody should obstruct her from going to her mother, and if anybody forced her to stay

with them, she would kill herself. Lastly, on 10.12.2012, she left home without intimating anybody. The applicant went to fetch her back on 07.12.2012, but she refused to cohabit. She has deserted the applicants. Therefore, her application is liable to be dismissed.

5. Appreciating the evidence, the learned Magistrate held that the present applicants had committed domestic violence against the respondent, and she is entitled to the monthly maintenance of Rs.3,000/-. The order of the learned Magistrate was impugned before the learned Sessions Judge. Learned Sessions Judge, appreciating the evidence, dismissed the appeal preferred by the present applicants.

6. Learned counsel for the applicants has vehemently argued that both the Court of learned Magistrate and learned Sessions Judge misinterpreted the term 'Domestic Violence'. Evidence is not properly appreciated. Both the impugned orders are erroneous and improper. Therefore, the revision application is liable to be allowed.

7. Per contra, the learned counsel for the respondent has vehemently argued that both the Courts have correctly appreciated the evidence and granted the reasonable quantum

of maintenance. Therefore, the present petition is liable to be dismissed.

8. Learned counsel for the respondent relied on the following cases :

(i) Krishna Bhattacharjee Vs. Sarathi Choudhury and another, (2016) 2 Supreme Court Cases 705.

(ii) Sau. Aruna Vs. Omprakash, 2021 SCC Online Bom 1292.

(iii) Mohammad Zuber Farooqi Vs. State of Maharashtra, 2019 SCC Online Bom 2295.

(iv) Laxmi Bai Patel Vs. Shyam Kumar Patel, 2002(2) HLR 695.

9. Relying on the above case laws, he has tried to convince this Court that the maintenance granted to the applicant was appropriate.

10. Learned counsel for the applicant has raised an objection that the application under the Domestic Violence Act cannot be considered since she was residing separate and a divorce proceeding was filed.

11. The record reveals that the respondent filed the proceedings under the Domestic Violence Act when the divorce petition was pending. At that time, their relations subsist. The

Hon'ble Apex Court, in the case of *Krishna Bhattacharjee (supra)* held that the 'Domestic Violence' is a continuing offence. Therefore, it cannot be said that a petition filed after two years of judicial separation is not barred by limitation. Here in the present case, the facts are altogether different. The respondent had filed the petition under the Domestic Violence Act. There was no judicial order of separation. Therefore, this Court does not find substance in the objection raised by the applicants that the application is barred by limitation.

12. The quantum is to be decided on the basis of the income and living standard of the husband. The Court also consider the responsibilities of the husband. Applicant No.1 has admitted the business he does. However, he has come up with the case that he has no income as alleged. However, it is come on record that applicant No.1 was paying Rs.4,500/- per month to his helper. It is also not in dispute that petitioner No.2 is a pensioner. Obviously, he has to maintain his wife. The applicant/husband has no other responsibility. Therefore, considering the inflation of the day and sky rocketing prices of daily needs, the maintenance of Rs.3,000/- per month appears not improper. The applicants have no material to point out

before the Court that the order granting maintenance to the respondent is erroneous, improper and incorrect.

13. For the above reasons, this Court does not find any substance in the present revision application.

14. Hence, the revision application stands dismissed.

(S. G. MEHARE, J.)

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vmk/-