

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 163 OF 2019

1. Suvarna w/o Sanjay Tupe
Age 35 years, Occ. Household
R/o c/o Baburao Dagduji
Lokhande (father)
Isarwadi, Paithan Road,
Tq. Paithan, Dist. Aurangabad.

2. Kum. Ishwari d/o Sanjay Tupe
Age 9 years, Occ. Education
r/o as above
u/g of applicant No. 1.

Applicants

Versus

1. Sanjay S/o Krushnaji Tupe
Age 37 years,
occ. Service
r/o A/8, Arya Ashish Housing
Society, Ramchandra Nagar
Manpada road, Domiwali-East
Tq. Kalyan, Dist. Thane.
2. Krushnaji S/o Bhaguji Tupe
Age 67 years, occ. Business
r/o As above.
3. Rekhabai w/o Krushnaji Tupe
Age 62 years, occ. Business
r/o As above.
4. Kavita w/o Rohan Yadhav
Age 33 years, occ. Service
r/o as above.

Respondents

Mr. K. A. Ingle, Advocate for the applicants.

Mr. V. B. Jadhav, Advocate holding for Mr. A. V. Hon, Advocate for respondents No. 1 to 4.

CORAM : M.G. Sewlikar, J.

RESERVED ON : 18th January, 2022
PRONOUNCED ON : 11th March, 2022.

JUDGMENT :

1. This revision is preferred by the wife and daughter against the order of learned Additional Sessions Judge, Aurangabad in PWDV Appeal No. 6/2017 dated 22nd April, 2019, thereby confirming the order passed by the learned Judicial Magistrate First class, Paithan, dated 19th May, 2016, whereby the application of the applicants under Protection of Women from Domestic Violence Act, 2005, ("D. V. Act" for short) came to be dismissed.

2. Facts leading to this application are that applicant No. 1 married respondent No. 1 on 15th July, 2005. Respondents No. 2 and 3 are the father and mother of respondent No. 1 respectively and respondent No. 4 is the sister of respondent No. 1.

3. Respondent No. 1 is the resident of Dombiwali, Tq. Kalyan, Dist. Thane. Applicant No. 1 hails from a small village. After

marriage, she started cohabitation with respondent No. 1 at an affluent place like Dombiwali. Applicant No. 1 was not accustomed to the city life.

4. All the respondents wanted applicant No. 1 to do some job. Therefore, she joined Animation and Computer course, the fees of which was Rs. 2,500/-. All the respondents started saying that she should at her own search a job. Applicant No. 1 was not accustomed to travelling by local trains. When she expressed her inability, respondents No. 2 and 3 started insulting her in indecent language. Respondent No. 3 used to beat her for no rhyme or reason. Respondent No. 1 started demanding money and ornaments from her parents. When the parents of applicant No. 1 tried to convince respondents No. 2 and 3, respondent No. 3 used filthy language. Respondents did not like anyone from maternal place of applicant No. 1 visiting applicant No. 1. The brother of applicant No. 1 had been to the matrimonial place of applicant No. 1. At that time, respondents insulted him saying that the brother wanted free lodging and boarding. Applicant No. 1 had delivered a baby girl. However, respondents wanted applicant No. 1 to go for work leaving the infant at home. They started passing sarcastic remarks at her on account

of birth of a baby girl. Her status in the house was that of a maid servant. She was not provided with proper food also. About four years before the incident, she was driven out of the house. Since then, respondents never cared for her. She tried to resume cohabitation with respondents but all her efforts went in vain.

5. It is further contended by the applicants that applicant No. 1 is not in a position to maintain herself. She has no source of income. Respondent No. 1 is working in a private firm and earning Rs.50,000/- per month. Respondents own a house. Respondent No. 2 is a vegetable vendor and earns Rs.40,000/- to Rs.50,000/- per month. Respondent No. 3 was working as a Nurse. Now she has retired and after retirement also she is working as a nurse and earns Rs. 40,000/- per month. Respondent No. 4 is also employed and earns Rs.40,000/- to Rs.50,000/- per month. Applicant No. 2 is taking education in English medium school. Considering the continuous rise in price index, applicants have claimed Rs.20,000/- per month as maintenance. On these contentions, application was filed under Sections 12, 17, 18, 19, 20, 22 and 23 of the D. V. Act.

6. Respondents No. 1 to 4 filed their joint written statement.

They admitted the relationship between respondent No. 1 and applicant No. 1 and that applicant No 2 is the daughter of applicant No. 1 and respondent No. 1. They denied all the other allegations.

7. They contended that applicant No. 1 was never subjected to any domestic violence. On 24th July, 2010, applicant No. 1 left the matrimonial house of her own accord along with her clothes, certificates and *Stridhan* with her father. Despite making several attempts, applicant No. 1 did not come back to respondent No. 1. Therefore, on 13th October 2014, respondent No. 1 issued a notice to applicant No. 1 calling upon her to come back to her matrimonial place. He had also sent money order of Rs.500/-. However, she did not come back. Since applicant No. 1 left the society of respondent No. 1, respondent No. 1 filed application for restitution of conjugal rights under Section 9 of Hindu Marriage Act vide Hindu Marriage Petition No. 1107/2014. Applicant No. 1 was never forced to join any course much less Animation Course. Respondent No. 1 noticed that applicant No. 1 is a painter and, therefore, he paid the fees of Animation Course as desired by applicant No. 1. None of the respondents used any filthy language against applicant No. 1. She completed the course of Animation and got a job in the month of July

2008. Applicant No. 1 has a strong inclination towards her parents. Therefore, she used to go to her parents quite often. In the month of November 2005, she had been to her maternal place on the pretext of illness of her mother. She had assured to come back within 2/3 days. But she stayed there for 15/20 days. In the month of August 2008, applicant No. 1 left the house to go to the place of her employment. However, she went to her maternal place. When she reached at Ale Phata, she called up respondent No. 1 and told him that she was going to her maternal place. She stayed at her maternal place till October 2008.

8. In the month of October 2008, on the request of applicant No. 1, respondent No. 1 had been to the maternal house of applicant No. 1 for bringing her back. At that time, he was insulted by the brother of applicant No. 1. Applicant No. 1 remained pregnant and in the 5th month of pregnancy, her father took her to her maternal place. In the month of November 2009, applicant No. 1 gave birth to applicant No. 2. Thus, respondents denied all the allegations of the applicants.

9. Heard Shri Ingle, learned counsel for the applicants and

Shri Jadhav, learned counsel holding for Mr. A. V. Hon, learned counsel for respondents No. 1 to 4.

10. Learned counsel Shri Ingle submitted that the learned trial Court and the learned appellate Court did not appreciate the evidence on record in proper perspective. He submitted that applicant No. 1 hails from a village. She was not accustomed to city life. Even then, she was forced to undergo Animation Course. Applicant, against her wish and just to honour the wishes of respondents No. 1 to 4, joined the course and she completed it. However, respondents started harassing and ill-treating her by making unlawful demand of Rs. 15,00,000/- for purchasing a flat. He submitted that when this demand was not fulfilled, applicant No. 1 was driven out of the house. Both learned trial Court and learned appellate Court gave undue importance to leaving of the house by applicant No. 1 in the year 2013. She had come back to the respondents and thereafter stayed with them. She had gone back to her maternal place as she was pregnant of five months. After her delivery, she came back to her matrimonial place. He submitted that she was subjected to ill-treatment on account of birth of a girl child. He submitted that on all the above counts, she was driven out of the

house. Learned trial Court and learned appellate Court did not appreciate the evidence in the manner in which it ought to have been done. He submitted that both the Courts below did not consider that the cause of action under Section 12 and other sections of D. V. Act is a continuous cause of action. On erroneous interpretation of the provisions of D. V. Act, both the Courts below erred in holding that the application is barred by limitation. For this purpose, learned counsel for the applicant placed reliance on the case of Krishna Bhattacharjee vs. Sarathi Choudhary and another reported in **(2016) 2 SCC 705** and Rajnish vs. Neha and another reported in **(2021) 2 Supreme Court Cases 324**.

11. Learned counsel Shri Jadhav for respondents No. 1 to 4 submitted that in the application the applicants have alleged that applicant No. 1 was driven out of the house. However, in the cross-examination, she admitted that she had left the house of her own accord. Vague allegations are made against the respondents that she was subjected to ill-treatment. He submits that applicant No. 1 wanted to join Animation Course. Therefore, respondent No. 1 got her admitted in the said course. The fees of the said course was also paid by respondent No. 1. He further submitted that the applicant

had left the house of respondent No.1 on the pretext of leaving for the place of work. At Ale Phata, she informed respondent No. 1 that she was on the way to her maternal place. Respondent No. 1 tried to get her back. However, applicant No. 1 did not respond. Respondent No. 1 had filed HMP No. 1107/2014 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. Applicant No. 1 did not even bother to cause her appearance in the said proceedings. Therefore, it proceeded ex-parte. As per the directions of the Court, respondent No. 1 had issued notice to applicant No. 1 and had annexed Demand Draft of Rs. 2,000/- so as to enable her to come back. However, applicant No. 1 did not give any positive response. He further submitted that he had issued notice to applicant No. 1 for resumption of cohabitation and had annexed Demand Draft of Rs. 500/-. Applicant No. 1 received the same but she did not come back. All these things clearly go to show that applicant No. 1 did not want to live with respondent No. 1. He further submitted that application is barred by limitation as it was filed after a period of four years after applicant No. 1 had left the house. He placed reliance on a case in the matter of Inderjit Singh Grewal X State of Punjab reported in (2011) 12 Supreme Court Cases 588.

12. I have given thoughtful consideration to the submissions of both the learned counsel. Applicant No. 1 filed her affidavit in lieu of examination-in-chief. Respondent No. 1 examined himself at Exhibit 17 in the record of the trial Court and respondent No. 2 examined himself at Exhibit 33.

13. Affidavit in lieu of examination-in-chief filed by applicant No. 1 is just a replica of her petition. Therefore, there is no need to devote any space for its discussion. In the cross-examination, applicant No. 1 admitted almost the entire case of respondent No. 1. she admitted that after marriage she did Animation Course and she also completed course of Drawing. She got employment in the Advanced School of Technology in the year 2008. She admitted that in the month of August 2008, without informing any of the respondents No. 1 to 4, she had gone to her maternal place directly from the place of work. She admitted that when she reached Ale Phata, she informed respondent No. 1 that she had been to her maternal place. She had lived there from August 2008 to October 2008.

14. This clearly shows that applicant No. 2 left her

matrimonial place without informing anyone and she stayed at her maternal place for a period of almost three months.

15. It is also not in dispute that applicant No. 1 had left for her maternal place on account of her pregnancy. She had gone there in the month of July 2009. She had delivered a baby girl. Cesarean was done on her. She further admitted that since she had undergone Cesarean, respondents insisted that she should live at her maternal place. These admissions go against her contention of domestic violence. Rather, it shows that the respondents cared for her and therefore, they insisted that she should live at her maternal place as she had undergone Cesarean.

16. She further admitted that on 24th October, 2010, her father had come to take her back. Since then she has been staying with her parents. She further admitted that while leaving her matrimonial place, she had taken all her clothes, certificates, documents and ornaments with her. She also admitted that respondent No. 1 had made a correspondence with her for resumption of cohabitation.

17. Both the learned Courts, relying on these admissions, held that applicant No. 1 was not subjected to any domestic violence. In the application and affidavit in lieu of examination-in-chief, applicant No. 1 stated that she was driven out of the house. However, in the cross-examination, she stated that her father had come to take her back. While leaving, she had taken all her clothes, certificates, documents and ornaments. This shows that she had left the house of her own accord with no intention to come back. This inference is fortified by her act of taking all her certificates and ornaments with her. All these admissions do not indicate that she was subjected to domestic violence. Therefore, the learned Courts below did not commit any error in appreciating the evidence. It is not the case of the applicant that her father had come to take her back as the respondents wanted her to leave the house or the atmosphere was so created that she had to leave the house. She is very specific in stating that she was driven out of the house whereas in the cross-examination, she admits that her father had come to take her back. Having regard to all this, it cannot be said that applicant No. 1 was subjected to domestic violence.

18. So far as limitation is concerned, both the learned

Courts committed error in holding that the application is barred by limitation. Learned counsel for the applicants has placed reliance on the case of Krishna Bhattacharjee vs. Srathi Choudhary and another (supra) wherein the decision of the Honourable Supreme Court in the case of Inderjit Singh Grewal vs. State of Punjab and another (supra) has been distinguished. The Honourable Supreme Court has held as under :-

“32. Regard being had to the aforesaid statement of law, we have to see whether retention of stridhan by the husband or any other family members is a continuing offence or not. There can be no dispute that wife can file a suit for realisation of the stridhan but it does not debar her to lodge a criminal complaint for criminal breach trust. We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of “aggrieved person” clearly postulates about the status of any woman who has been subjected to domestic violence as defined under Section 3 of the said Act. “Economic abuse” as it has been defined in Section 3(iv) of the said Act has a large canvass. Section 12, relevant portion of which has been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. It has been held in Inderjit Singh Grewal that Section 468 of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under Section 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the same as we are of the considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under Section 12 of the 2005

Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. The concept of “continuing offence” gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act.

19. Learned counsel for the applicants placed reliance on the case of Rajnish vs. Neha and another reported in **(2021) 2 Supreme Court Cases 324**. However, this decision of the Honourable Supreme Court does not apply to the facts of the case in hand as it relates to proceedings under Section 125 of the Code of Criminal Procedure.

20. Having regard to this, it is axiomatic that both the learned Courts below did not commit any error in dismissing the application. Application is, therefore, devoid of any substance. Hence, it is dismissed.

(M. G. SEWLIKAR)
Judge