

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.651 OF 2019

Sow Nirmala Vishnu Sampate,
Age: 65 years, occu: Household
r/o Pangaon at present house of
Natakar Sambhaji nagar, Khadgaon
road, Latur

...Petitioner

Versus

Vishnu Venkati Sampate,
Age : 66 years, occu: Agri
R/o Pangaon Tq. Renapur
Dist. Latur

...Respondent

Mr Girish N. Kulkarni (Mardikar), Advocate for Petitioner
Mr Suraj V. Gundre, Advocate for Respondent

AND
CRIMINAL REVISION APPLICATION NO. 164 OF 2019

Vishnu S/o Vyankati Sampate,
Age : 61 Yrs., occ: Agril.,
R/o Pangaon Tq. Renapur,
Dist. Latur.

..Applicant
(Orig. Respondent)

Versus

Sow. Nirmala W/o. Vishnu Sampate,
Age: 56 years, occ. - Household
R/o At present Natekar House,
Sambhaji Nagar, Khadgaon Road,
Latur

...Respondent
(Orig. Applicant)

Mr Suraj V. Gundre, Advocate for Applicant
Mr Girish N. Kulkarni (Mardikar), Advocate for Respondent

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 18th OCTOBER, 2022

ORDER :

1. Heard finally with consent of both the sides at admission stage.
2. The dispute in narrow compass is about availing remedy under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the D.V. Act" for the sake of convenience).
3. The petitioner in Criminal Writ Petition No. 651/2019 is stated to be wife of respondent/Vishnu, who has filed Criminal Revision Application No. 164/2019. The petitioner has initiated the proceedings under the D.V. Act against the respondent before the learned Judicial Magistrate First Class at Latur in the year 2015 and sought various reliefs vide proceedings of Criminal M.A. No. 227/2015. The learned Magistrate was pleased to partly allow the application and directed to the respondent/husband to pay Rs. 5,000/- per month to the wife towards maintenance from the date of filing of the application. In addition, he shall pay compensation of Rs.25,000/-. The respondent/husband was also directed to pay house rent at the rate of Rs.1,500/- per month.
4. Feeling aggrieved by the order of Judicial Magistrate First Class in Criminal M.A. No.227/2015, the respondent/husband has filed PWDV Criminal Appeal No. 01 of 2018 before the Sessions Court at Latur, which was assigned to the learned Additional Sessions Judge, Latur. The

learned Additional Sessions Judge, Latur after hearing both the sides was pleased to modify the order passed by the learned Magistrate and directed to the respondent/husband to pay maintenance allowance @ Rs.5,000/- per month inclusive of amount of Rs. 2,000/- per month granted to her in the decree passed in Special Civil Suit No. 97/2004 and rent @ Rs. 1500/- per month. The order of granting compensation of Rs.25,000/- came to be set aside while deciding the appeal.

5. Feeling aggrieved by the impugned Judgment and order passed by the learned Additional Sessions Judge, Latur dated 15.03.2019 in PWDV Criminal Appeal No. 01 of 2018, the petitioner/wife has preferred Criminal Writ Petition No. 651/2019 whereas husband/respondent has preferred Criminal Revision Application No. 164/2019.

6. Both proceedings are being disposed of by common order.

7. Heard Mr Girish Kulkarni, learned counsel for the petitioner in Criminal Writ Petition No. 651/2019 and Mr Suraj Gundre, learned counsel for the respondent/husband (Criminal Revision Application No. 164/2019).

8. Mr Gundre, learned counsel for the respondent/husband invited my attention to the additional reply affidavit filed on behalf of respondent/husband with copy of decree passed in RCS No.103/1980. He vehemently submitted that the competent Civil Court was pleased to grant decree of divorce in view of consent given by wife and accordingly, decree came to be passed on 20.06.1980. The decree passed by the said Civil

Court has reached finality since no appeal is preferred. He submitted that there is no relationship between the parties as husband and wife since the date of decree of consent divorce. As such, the proceedings under the D.V. Act are not maintainable when there was no domestic relationship between the parties. He submitted that the respondent/husband is paying maintenance as per the orders of the Civil Court and also invited my attention to the reply affidavit wherein calculation regarding payment of maintenance is shown. He submitted that the respondent/husband has paid almost 90% amount of maintenance to the wife including the order of maintenance under the D.V. Act. He submitted that in view of various Judgments delivered by this Court as well as the Apex Court when there is no domestic relationship between the parties, the petition under the D.V. Act is not at all maintainable. He has placed his reliance on the following citations in support of his argument :-

- (i) ***Sejal Dharmesh Ved Vs. The State of Maharashtra and others (Criminal Application No. 160 of 2011 dated 07.03.2013***
- (ii) ***Kishor Shrirampant Kale Vs. Sou. Shalini Kishor Kale and others reported in 2010 Cri. L.J. 4049***
- (iii) ***Criminal Application No. 164/2017 (Nagpur Bench dated 09.08.2021)***
- (iv) ***Criminal Revision Application No. 121/2018 (Smt. Sadhana w/o Hemant Walwatkar Vs. Hemant s/o Shalikramji Walwatkar) dated 18th April, 2019***
- (v) ***Smt. Bismita Saikia @ Bismita Saikia Dutta Vs. Pranjal Dutta and others - The Gauhati High Court in Criminal Revision Petition No. 1/2017.***

9. By taking help of above said citations, Mr Gundre, learned counsel for the respondent/husband vehemently submitted that the proceedings filed by the petitioner under the D.V. Act is liable to be quashed and set aside. The orders passed by the Courts below are also liable to be set aside when the proceedings under the D.V. Act is not maintainable.

10. Per contra, Mr Girish Kulkarni, learned counsel for the petitioner/wife supported the order passed by the learned J.M.F.C. in the proceedings under the D.V. Act as well as the impugned Judgment and order rendered by the learned Additional Sessions Judge, Latur in appellate proceedings to certain findings. He invited my attention to section 2(f) of the D.V. Act and submitted that in view of the definition, provisions of the D.V. Act do attract in this case. He further invited my attention to the copy of Judgment delivered by the Second Joint Civil Judge, Senior Division at Latur in Special Civil Suit No. 97/2004. He brought my attention to the findings recorded by the Civil Court more particularly, findings against issue No. 1, 1(a) and (2). He submitted that the Civil Court has held that present respondent/husband has failed to prove that marital relationship between the parties came to an end. On the contrary, the petitioner/wife has succeeded in proving that the respondent/husband has deserted her and she was subjected to cruelty at his hands. He also invited my attention to the reasons recorded by the Civil Court in the said Judgment and submitted that the competent Civil Court has observed in para Nos.10 to 12 that the consent decree passed by the

Court in RCS No.146/2003 is without jurisdiction and as such, martial tie between the parties is still intact.

11. By taking help of above said findings recorded by the Civil Court in the above said special suit, Mr Kulkarni, learned counsel for the petitioner/wife vehemently submitted that the consent decree of divorce is null and void in the eye of law, which has washed out the case of respondent/husband. The respondent/husband has deserted his wife and not made any provision for her maintenance which he was bound to make arrangement. It is nothing but domestic violence as contemplated under the D.V. Act. He has supported to the findings recorded by the learned JMFC in the D.V. Act proceedings which are upheld by the Appellate Authority. However, he submitted that the order passed by the Appellate Authority making modification in the order is incorrect and urged to restore the order passed by the learned JMFC in the D.V. Act proceedings.

12. I have considered the submissions of both the sides. Perused the order passed by the learned J.M.F.C. in Criminal M.A. No. 227/2015 as well as the Judgment and order passed by the Appellate Authority/Additional Sessions Judge, Latur in PWVDA Criminal Appeal No. 01/2018 as well as the copies of the Judgment and orders passed by the competent Civil Court, copies and documents on record.

13. Following is the admitted scenario which needs focus.

- (a) The marriage between the parties in the year - 1974.
- (b) According to the case of the petitioner/wife, husband deserted her in the year 1979.

- (c) The petitioner/ wife lived with her parents from the year 1979 to 2004.
- (d) Her mother died in the year 2004.
- (e) From the year 2004, the petitioner/wife started residing separately at Latur.
- (f) The D.V. proceedings came to be filed by the petitioner/wife on 11.03.2015.

14. In the light of the above admitted factual scenario, I have also gone through the definitions of domestic relationship and share household.

15. I have also gone through citations relied upon by the respondent/husband.

16. It may not be out of place to bring on record earlier above round of litigations between the parties which are of civil nature. There was proceedings of R.C.S. No. 103/1980 before the Civil Judge, Senior Division at Latur. As per the consent W.S. filed by the petitioner/wife, that suit came to be decreed and said suit came to be disposed of on 20.06.1980. Thereby, relationship between the parties came to an end. Again, there was one more civil proceedings between the parties. The petitioner/wife has filed Special Civil Suit No. 97/2004 against her husband/respondent in the Court of Civil Judge, Senior Division, Latur claiming relief for maintenance. The respondent/husband has appeared and resisted the said suit. In the said suit, competent Civil Court has recorded certain findings against the present respondent/husband. In the said suit, the competent Civil Court has held that decree passed by the

Civil Court earlier in the year 1980 was without jurisdiction and the relationship between the parties did not come to an end and still it exists. The Judgment and decree passed by the competent Civil Court in Special Civil Suit No. 97/2004 also reached finality since no appeal was preferred. Moreover, the respondent/husband is paying the maintenance which is awarded by the Civil Court while passing the decree in the said suit.

17. In the above background, I have to see whether the proceedings initiated by the petitioner/wife against her husband under the provisions of the D.V. Act is maintainable ?

18. The pleadings of the petitioner/wife in the D.V. Act are important. The copy is placed on record at Exh.'B' (page 28). The relevant part of para No.1 is important which throws light on the relationship between the parties.

“ गैरअर्जदाराने घरातून हाकलून दिल्याने अर्जदार ही नाईलाजास्तव मागील २० ते २१ वर्षांपासून मौजे कामखेडा ता. रेणापूर जि. लातूर येथे तिचे आई, वडील भावाजवळ राहत होती. परंतु दोन तीन वर्षांपासून आई वारल्यामुळे अर्जदाराच्या भावानेही सांभाळण्यास इन्कार केला त्यामुळे गेल्या एक दोन वर्षांपासून लातूर येथे मोलमजुरी करून पोट भरते व किरायाची खोली करून एकटीच राहते. ”

19. In the above background, I have also considered the provisions of the D.V. Act, more particularly, domestic relationship and share household which reads thus -

2(f) “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by

consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

2(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household."

20. Admittedly, the petitioner/wife is residing away from the respondent/husband since more than 21 years even on the date of filing of the proceedings under the D.V. Act. Mr Kulkarni, the learned counsel for the petitioner/wife has attempted to interpret section 2(f) of the D.V. Act in order to bring the case of the petitioner/wife under the provisions of the D.V. Act by pointing out that both of them lived together as husband and wife in the past. I do not agree with the submissions of the learned counsel for the petitioner/wife.

21. On careful reading of section 2(f) of the D.V. Act, it would reveal that domestic relationship means a relationship between the two parties who live or have, at any point of time lived together in a shared household, when they are related by consanguinity, marriage, or other relationship in the nature of marriage.

22. According to the pleadings of the petitioner/wife, she is not residing with her husband since last more than 21 years. There is no whisper in the pleadings that she stayed in shared household with her husband in recent past. There is no pleadings in the application that in the recent past, there was domestic relationship between the parties. A useful reference can be made in this regard, in case of ***Inder Singh Grewal Vs. State of Punjab and Anr. reported in (2011) 12 SCC 588***, wherein it is held that when there is no domestic relationship between the husband and wife at the time of filing of petition under the D.V. Act, the proceedings under the D.V. Act is not maintainable.

23. In the present case as discussed earlier, there was no relationship between the parties which may attract definition of Section 2(f) of the D.V. Act. There is even no foundation of pleadings in the petition/application under the D.V. Act to attract the definition of section 2(s) (share household). After a gap of more than 21 years, the wife has filed the proceedings under the D.V. Act without having foundation of necessary basic legal requirements to attract the provisions of the said Act. In this context, the reliance can be placed in ***Kishor Shrirampant Kale Vs. Sou. Shalini Kishor Kale and others (supra)***, wherein this Court (Bench at Nagpur) has held that when wife and husband admittedly living separately since last 15 years and wife abruptly filed proceedings under the D.V. Act after a long gap of 15 years without having averments regarding domestic violence, complaint is not maintainable.

24. In Criminal Application No. 164/2017, this Court (Bench at Nagpur) after relying upon the decision in case of ***Inder Singh Grewal Vs. State of Punjab and Anr. (supra)*** held that at the time of filing of application under the D.V. Act, the applicant was not the wife and there was no domestic relationship between them. Resultantly, the order passed by the learned J.M.F.C. and the order passed by the Appellate Authority came to be set aside.

25. In case of ***Sejal Dharmesh Ved Vs. The State of Maharashtra and others (supra)***, this Court at Principal Seat at Bombay took similar view and held that when a wife, who has returned from U.S.A. and consequently, from domestic relationship and lived in India for one year, cannot file an application with regard to that relationship after such time. Such wife cannot be taken to be in any domestic relationship. It is also observed in the said order that a wife who lived in domestic relationship earlier, but which ceases only because of any domestic violence can certainly file an application for such domestic violence that took place whilst she lived in that relationship. Such application is required to be filed within a reasonable time to show that relationship would give her the cause of action to sue under the D.V. Act for the reliefs under the Act.

26. There is no need to refer the citation of Gauhati High Court relied upon by the learned counsel for the respondent/husband when there are various decisions of this Court on the same point are available as well as direct decision of the Supreme Court referred above.

27. Having considered the submissions of both the sides and in view of legal position made clear by the Apex Court and this Court in above referred stock of citations, it is very much clear like day light that there was no domestic relationship between the parties on the day when the petitioner/wife has filed the application under the D.V. Act. She never lived with her husband in a shared household at any time since last more than 21 years. Under these circumstances, the proceedings initiated by the petitioner/wife against respondent/husband under the D.V. Act is certainly not maintainable. The orders passed by both the Courts below are contrary to the provisions of the D.V. Act. Both the Courts below have not taken into consideration the provisions of the D.V. Act in a proper way and arrived at erroneous conclusion. Certainly, the orders passed by both the Courts below are liable to be quashed and set aside.

28. In the result, the criminal writ petition filed by the petitioner/wife must fail whereas the criminal revision application filed by the respondent/husband must succeed.

ORDER

- (I) Criminal Writ Petition No. 651/2019 filed by the petitioner/wife - Sow Nirmala Vishnu Sampate is hereby dismissed.
- (II) Criminal Revision Application No. 164/2019 preferred by the applicant/husband - Vishnu s/o Vyankati Sampate is hereby allowed in terms of prayer clause 12(C).
- (III) Both the proceedings are accordingly disposed of.

- (IV) No order as to costs.
- (V) So far as the maintenance amount deposited by the respondent/husband in respective proceeding is concerned, that would be taken into consideration while making calculation as per the decision of Civil Court and needs to be adjusted towards maintenance/arrears of maintenance. No recovery shall be made from the petitioner/wife.

[SHRIKANT D. KULKARNI, J.]

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