

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

CRIMINAL WRIT PETITION NO. 1092 OF 2019

Sau Masudi Jatansingh Vasave
Age: 50 years, Occupation: Nil
Resident of: At Post Bhandhare
Taluka Navapur, District Nandurbar

... Petitioner

VERSUS

1. Shri Jatansingh Pratap Vasave
Age: 55 years, Occupation: Business & Agri.
2. Shri Pratap Mansu Vasave
Age: 79 years, Occupation: Agriculture
3. Sau Malunibai Jatansingh Vasave
Age: 48 years, Occupation: Agriculture

All resident of: At Post Bandhare
Taluka Navapur, District Nandurbar

4. The State of Maharashtra
Through the Officer In charge
Navapur Police Station,
Navapur, District Nandurbar

... Respondents

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Mr. Mukul S. Kulkarni, Advocate for petitioner
Mr. Sahil Chaudhari, Advocate h/f Mr. Deepak Chaudhari, Advocate
for respondent Nos. 1 to 3
Mr R. B. Bagul, APP for respondent No.4

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CORAM : R. G. AVACHAT, J.

**RESERVED ON : 30th MARCH, 2022
PRONOUNCED ON : 07th JUNE, 2022**

J U D G M E N T :-

Rule. Rule made returnable forthwith and heard finally with consent of learned counsel for the parties.

2. The challenge in this writ petition, under Article 227 of the Constitution of India, is to a common judgment and order dated 13.05.2019 passed by the learned Additional Sessions Judge, Nandurbar in Criminal Appeal Nos. 13 and 18 of 2018. Both those appeals were preferred under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (for short, 'PWDV Act'), against the judgment and order dated 25.07.2018, passed by the learned Judicial Magistrate First Class (J.M.F.C.), Navapur in Criminal Miscellaneous Application No.18 of 2014, preferred under Section 12 of the PWDV Act. The learned J.M.F.C. partly allowed the application (Criminal Misc. Application No.18 of 2014) directing the respondent No.1 herein to pay the petitioner a sum of Rs.1,000/- per month towards monetary relief/maintenance from the date of application and Rs.500/- per month towards rent of alternate accommodation from the date of the order. The respondent No.1 was further directed to pay the petitioner a sum of Rs.5,000/- and

Rs.3,000/- as compensation and cost of the proceedings, respectively. The application was dismissed against respondent Nos. 2 and 3, the father and second wife of respondent No.1.

3. Both, the petitioner and respondent No.1, preferred two separate appeals taking exception to the order passed by the learned J.M.F.C. The petitioner preferred the appeal, seeking enhancement in the amount of monetary relief. The respondent – husband preferred the appeal for setting aside the order directing him to pay the petitioner monetary relief as stated herein above. The learned Additional Sessions Judge, dismissed the appeal preferred by the petitioner and allowed the appeal preferred by the husband and thereby set aside the order dated 25.07.2018 passed by the learned J.M.F.C. Hence, the present criminal writ petition.

4. The facts in short, giving rise to the present petition are as follows:

The petitioner and respondent No.1 belong to Adivasi community. The petitioner claims to have married the respondent No.1, 25 years before filing of the application (Criminal Misc. Application No.18 of 2014). She claims to have been blessed with a

child, born of the said marriage. The respondent No.1 contracted second marriage with respondent No.3 whom six daughters have been born of the said marriage. The petitioner claims to have continued to cohabit. The respondents, however, harassed and ill-treated her. It is her case that a year before filing of the application under Section 12 of the PWDV Act, the respondents turned her and her son out of the matrimonial home. The respondent No.1 did not make any provision for maintenance of the petitioner – wife and their son, Manoj. It is also her case that the respondent No.1 is financially well. He owns a big house and agricultural land. He is also the owner of a tractor. It is also her case that respondent No.1 is the Chairman of local co-operative milk society. He owns number of buffaloes. He also cultivates the lands of others on crop share basis. As such, according to the petitioner, the respondent No.1 and his father are affluent persons. The petitioner, therefore, preferred application for various reliefs.

5. The respondents contested the application denying to have marital or marriage like relationship between the petitioner. He also denied paternity of the child of the petitioner. It is his case that his financial position is weak. He is unable to pay any amount

towards maintenance. His wife and daughters are dependent on him. With all these contentions, rejection of the application was prayed for.

6. The learned J.M.F.C. allowed the application holding that there was matrimonial relationship between the petitioner and respondent No.1. He, therefore, granted the application. The appellate Court, however, on re-appreciation of the evidence, came to the conclusion that no relationship between the petitioner and the respondent was in existence since 1990 to the date of filing of the application (i.e. for over 24 years). According to the learned Additional Sessions Judge, the petitioner failed to prove domestic violence alleged to have been committed by respondent No.1. In his view, way back in June 1990, the relationship between the petitioner and respondent No.1, came to an end. It was in the nature of divorce obtained under the customary law. The learned Additional Sessions Judge, while allowing the appeal preferred by respondent No.1, has directed the petitioner – wife to pay back the amount received pursuant to the order dated 25.07.2018 passed by the learned J.M.F.C. Navapur in Criminal Misc. Application No.18 of 2014.

7. Heard.

The learned counsel for the petitioner would submit that matrimonial or at least relationship like marriage had been in existence between the petitioner and the respondent No.1. He relied on the definitions of certain terms given in Section 2 of the PWDV Act. He would further submit that the respondent No.1 was the only son of his father. The family is financially well. The monetary relief granted in favour of the petitioner was meager one. He, therefore, urged for allowing the writ petition with grant of enhanced monetary relief.

8. The learned counsel for the respondents would, on the other hand, submit that no relationship between the petitioner and respondent No.1 had ever been existed. If any such relationship was there as alleged by the petitioner, the same came to an end in view of the execution of the document Exh.93. The parties belong to Adivasi community. There has been no cohabitation between the petitioner and respondent No.1 since June 1990. Under the document Exh.93, the petitioner gave up her claims against the respondent. She is, therefore, not entitled to any kind of relief. The

learned counsel reiterated the reasons given by the Additional Sessions Judge in support of the order impugned herein.

9. Considered the submissions advanced. Perused the evidence relied on. Gone through the citations placed on record.

10. Before advertng to the factual matrix, it is apposite to refer the definitions of relevant terms.

Section 2(a) “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

Section 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;

Section 2(g) “domestic violence” has the same meaning as assigned to it in section 3.

11. Close reading of the term “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. In the case in hand, the petitioner claims to have had married the respondent No.1 about 25 years before she filed the

application under Section 12 of the PWDV Act. Admittedly, the petitioner is an illiterate and rustic woman. She belongs to Adivasi community. It, therefore, appears that she could not give details of her marriage with the respondent No.1. The same was, however, not fatal, because, her relationship with respondent No.1 in the nature of marriage also entitles her to claim relief(s) under PWDV Act. Manoj is the son of the petitioner, allegedly fathered by respondent No.1. Admittedly, in the birth certificate of Manoj, the name of respondent No.1 has been reflected as his father. The respondent No.1 relies on a document (Exh.93) in proof of his claim to have no kind of relationship with the petitioner. The said document has been executed by the father of the petitioner on 25.06.1990. It is shown to have been executed in the presence of panch witnesses. It was executed ostensibly in favour of respondent No.1 or his father.

12. Admittedly, the petitioner is neither an executant of the the said document nor has she signed it acknowledging the contents thereof. The said document would in no way bind her. On going through the terms of the said document, this Court finds it to be advantages to the petitioner herein. It is reiterated that the said document has been relied on by the respondents themselves. They,

therefore, cannot resile therefrom. The terms of the document are to the effect that the father of the petitioner acknowledged thereunder that the petitioner was serving as a labourer with respondent No.1 on yearly basis. There are two documents executed on 25.06.1990, one executed by the father of the petitioner and the other by the respondent No.2, the father of respondent No.1. The documents are titled as “Fargati”/ “Samzota Patrak”. An emotional relationship developed between the petitioner and respondent No.1. As a result, the petitioner conceived. She was pregnant of five months when the document was executed. The respondent No.1 admitted the same. He, however, got married with respondent No.3 just a few days before execution of the said document. The father of the petitioner, therefore, decided not to send her to the house of respondent No.1 only with a view to avoid disputes and quarrel that may arise between the two females, namely the petitioner and newly married wife of respondent No.1. The father of the petitioner, therefore, received a sum of Rs.3,500/- from respondent No.1 and undertook to maintain the child to be borne to the petitioner. He also gave up all rights which the petitioner would have against the respondents.

13. It is reiterated that in no way, this document would bind the petitioner since she is not party thereto. The respondents in their reply to the application, have not averred existence of a family or community, custom whereunder a marital tie can be discontinued. Even the reply to the main application is silent to state execution of the documents Exh.93 and 103. The respondents for want of pleadings and proof of existence of custom would not be entitled to make out their case as has been urged for. The documents Exh.93 and 103 go long way to establish the petitioner to have had emotional relationship with respondent No.1. She conceived from him. She delivered a baby boy fathered by respondent No.1. It is also her case that she continued to co-habit with the respondent No.1 at his house, but was, however, turned out of the house some days before the application for monetary reliefs was moved. It is reiterated that recitals of the document that father of the petitioner undertook not to send the petitioner to the house of respondent No.1 only with a view to avoid quarrel or dispute between the two females does indicate the petitioner to have had marriage like relationship with the respondent No.1. Section 3 of the PWDV Act

defines the term “domestic violence”. Economic abuse is a part of the definition of the term “domestic violence”. Clause (iv) of the explanation (i) to Section 3 describes the term “economic abuse” to mean deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law. Failure on the part of the respondent No.1 to provide the petitioner with financial resources suggest him to have committed domestic violence. The learned Additional Sessions Judge, was therefore, not correct in observing that the petitioner has failed to prove to have been subjected to domestic violence. It appears that the learned Additional Sessions Judge took the term violence in its literal meaning to mean causing of harm or injury to the petitioner.

14. In view of this Court, the learned J.M.F.C. was right in granting the petitioner relief, observing the petitioner to have proved to have been in domestic relationship with the respondent No.1.

15. The record indicates that respondent No.1 owns a big residential house. He is the only child of his father, who owns more than seven acres of agricultural land. Way back in June 1990, he paid a sum of Rs.3,500/- to the father of petitioner to have

dissolution of relationship between the petitioner and himself. True, he has a wife living (second) and six daughters to maintain. In view of this Court, grant of Rs.1,000/- per month to the petitioner towards her maintenance is meager one considering the cost of living and financial status of respondent No.1. This Court, is therefore, inclined to enhance the same to Rs.2,000/- per month, to be paid from the date of the order passed in the appeal.

16. For the reasons given herein above, the writ petition succeeds in terms of following order:

ORDER

- (i) The criminal writ petition is allowed.
- (ii) The order dated 13.05.2019, passed by the learned Additional Sessions Judge, Nandurbar, dismissing Criminal Appeal No.18 of 2018 and allowing Criminal Appeal No.13 of 2018, is hereby set aside.
- (iii) The amount of monetary relief/maintenance allowance granted by the learned J.M.F.C. Navapur vide order dated 25.07.2018 in Criminal Miscellaneous Application No.18 of 2014 is hereby enhanced from Rs.1000/- per month to Rs.2,000/- per month, to be paid from the date of the order passed in the appeal. Rest of the terms of

the order passed by the learned J.M.F.C. to stand unaltered.

(iv) Rule is made absolute in above terms.

[R. G. AVACHAT, J.]

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