

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

CRIMINAL REVISION APPLICATION NO. 300 OF 2019

Popatrao S/o. Digambar Nagargoje,
Age : 55 Years, Occu : Service,
(as Teacher English School Kharda)
R/o. Jaywantnagar, Tq. Bhoom,
Dist. Osmanabad.

..PETITIONER
(Org. Accused)

VERSUS

1. The State of Maharashtra,
Through the Police Station Shirurkasar,
Tq. Shirur Kasar, Dist. Beed
2. Vrandawani @ Vandana W/o.
Popatrao Nagargoje (Divorced)
Age : 47 Years, Occu : Service,
R/o. Indraprasth Colony,
Nagar Road, Beed, Tq. & Dist. Beed
3. Pratiksha D/o. Popatrao Nagargoje,
Age : 15 years, Occu : Education,
Minor under Guardianship of
Mother Res. No. 2
4. Nandabai W/o. Angad Wanve,
Age : 57 years, Occu : Household,
R/o. Bedarwadi, Tq. Bhoom,
Dist. Osmanabad
5. Angad S/o. Keru Wanve,
Age : 59 years, Occu : Agri.,
R/o. Bedarwadi, Tq. Bhoom,
Dist. Osmanabad.

... RESPONDENTS
(Res. No. 4 & 5 Formal Parties)

Smt. S. K. Doke (Renge) & Shri. K. R. Doke, Advocate for the applicant

Shri. S. D. Ghayal, APP for the respondent/State

Shri. S. A. Khekale, Advocate for respondent Nos. 2 and 3

CORAM : M. G. SEWLIKAR, J.
RESERVED ON : 17th December, 2021
PRONOUNCED ON: 23rd February, 2022.

JUDGMENT

1. This revision is preferred by the original respondent against the judgment and order dated 3rd October, 2019 passed by the learned Sessions Judge, Beed in Criminal Appeal No. 30 of 2019 thereby confirming the order dated 1st March, 2019 passed by the learned Judicial Magistrate First Class, Shirur Kasar, District Beed in Criminal Miscellaneous Application No. 97 of 2011, thereby awarding maintenance of Rs.5,000/- to the respondent No. 3.

2. Facts leading to this application are that the marriage between applicant and respondent No. 2 was solemnized on 19th March, 1993. After marriage respondent No. 2 went for cohabitation with the applicant. She was maintained well till the year 2004. During this period, she delivered respondent No. 3 from the applicant.

3. It is further alleged in the application that on 22nd November, 1994, the respondent No. 2 was appointed as Supervisor in Ekatmik Balvikas Seva Karyalaya, Beed and applicant was appointed as an Associate Teacher in the year 1993. It is further alleged that salary of respondent No. 2 used to be taken by applicant and his parents. Whenever she demanded money for expenses, she was not provided with it and she was subjected to mental and physical harassment. When respondent No. 2 was pregnant, applicant started doubting her chastity and asked her to terminate her pregnancy. The applicant and his parents used to keep her starved used to beat her and abuse her. Applicant and his parents demanded Rs.25,000/- from respondent No. 2 and since that was not paid she was driven out of the house. It is further alleged that on 6th March, 2005, applicant performed marriage with one Chandrakala. Respondent No. 2 filed an FIR under Section 498A of the Indian Penal Code against the applicant and also filed a private complaint under Section 494 of the Indian Penal Code against the applicant. Respondent No. 2 is unable to maintain herself and

respondent No. 3 on account of continuously rising price index. Applicant is an Associate Teacher in Rayat Shikshan Sanstha and earns Rs.35,000/- per month. He has 25 acres irrigated agricultural land at Bhoom. Annual income of the applicant from all the sources is Rs.15 lakhs. Respondent No. 2 has, therefore, filed the application under Section 12 of Protection of Women from Domestic Violence Act, 2005 ("D. V. Act" for short) and prayed maintenance at the rate of Rs.10,000/- per month for herself and respondent No. 3.

4. Applicant appeared in the application and filed his written statement at Exhibit 17. He contended that the marriage has been dissolved vide the decree in the H.M.P. No. 99 of 2005. It is further contended by the applicant that respondent No. 2 did not live with the applicant even for 4 days. Respondent No. 2 went to Gangakhed, District Parbhani as she got admission in B.Ed. college. The applicant has incurred entire expenses of her education. In the year 1995, respondent No. 2 got a job as a Supervisor in Ekatmik Balvikas Prkalpa Karyalaya, Shirur, Dist. Beed She has been staying with her parents since then. Since then,

respondent No. 2 has not been living with the applicant. He has further alleged that whenever applicant tried to meet respondent No. 2, her brother and her parents never allowed him to do so. Applicant left no stone unturned to bring back respondent No. 2 for cohabitation, but she did not respond. Respondent No. 2 had filed application for maintenance in the Court at Patoda. When the applicant got the notice of this application, he came to know that applicant had delivered respondent No.3. He contended that respondent No. 3 was not borne from him to respondent No. 2. A false case under Section 498A of the Indian Penal Code has been filed against him. He has, therefore, prayed for dismissal of the application.

5. Learned Judicial Magistrate First Class partly allowed the application. Learned Judicial Magistrate First Class dismissed the application with regard to respondent No. 2 and allowed the application with regard to respondent No. 3 and awarded maintenance at Rs.5,000/- per month. The learned Magistrate also awarded Rs.50,000/- to

respondent No. 2 as compensation on account of mental torture.

6. This order was challenged before the Sessions Court at Beed, by preferring Criminal Appeal No. 30 of 2019. The learned Appellate Court partly allowed the appeal and confirmed the order of granting maintenance to respondent No. 2 but allowed the appeal of applicant to the extent of award of compensation of Rs.50,000/- to respondent No. 2 for mental cruelty, mental abuse and set aside the said order to that extent. The applicant-husband has preferred this revision against this order.

7. Heard Smt. Doke, learned counsel for the applicant, Shri. Ghayal, learned APP for the respondent/State and Shri. Khekale, learned counsel for respondent Nos. 2 and 3.

8. Learned counsel Smt. Doke for the applicant submitted that the applicant had filed petition for dissolution of marriage bearing H.M.P. No. 99 of 2005. The said petition

was allowed on 27th April, 2011. She submits that when respondent No.2 realised that the petition for divorce would be allowed, two weeks before i.e. 13th April, 2011, she filed this application under the D. V. Act. She submitted that a divorced wife is not entitled to claim maintenance under the Domestic Violence Act. She submitted that within 4 days of marriage respondent No. 2 left the petitioner. Since then she has not been living with the applicant. In order to claim relief under Domestic Violence Act, the essential requirement is that the wife should have been living with the husband in a shared household. The applicant on the date of coming to force of D. V. Act, was not living with the applicant. She further submits that the respondent No. 2 had filed application for maintenance for herself and respondent No. 3 in the year 2005. The said application was allowed. It clearly goes to show that respondent Nos. 2 and 3 were not living with the applicant on the date D. V. Act came into force. Therefore, she is not entitled to maintenance.

9. Learned counsel Smt. Doke has placed reliance on the following cases:

- (1) Smt. Sadhana w/o. Hemant Walwatkar Vs. Hemant s/o. Shalikramji Walwatkar, 2019 All MR (Cri) 2299.
- (2) D. Velusamy Vs. D. Patchaiammal, 2010 AIR SCW 6731.
- (3) Gurudev s/o Hanmant Gurav and other Vs. Jayashree w/o Gurudev Gurav in Criminal Petition No. 11476 of 2013.
- (4) Nishant Hussain Vs. Seema Saddique and Anr. 2012 SCC Online Raj 2873.
- (5) Santosh Kumar and another Vs. The State of Bihar in Criminal Miscellaneous No. 41318 of 2016 arising out of PS Case No. 110/2015.
- (6) Jayesh Uttamrao Khairnar & ors. Vs. State of Maharashtra & ors. 2010(3) Bom. C.R. (Cri.) 939.
- (7) Tulshiram @ Tulsidas @ Haribhau Patil and others Vs. State of Maharashtra and others, 2021 DGLS (Bom.) 1237.

10. Learned counsel Shri. Khekale for respondent Nos. 2 and 3 submitted that respondent Nos. 2 and 3 were driven out of the house by the applicant. On the date of filing of petition under the D. V. Act, there was relationship subsisting between the applicant and respondent No. 2 as husband and wife. He submits that on the date of enforcement of this act, the applicant and respondent No. 2 were husband and wife. Their relationship terminated by decree of divorce after the

filing of petition under D. V. Act. Therefore, on the date of filing of the petition under D. V. Act, respondent No. 2 was wife of the applicant. Therefore, simply because subsequent decree of divorce has been granted. Respondent No. 3 cannot be said to be disentitled to the maintenance. He submits that respondent No. 3 is the daughter of the applicant. Therefore, applicant is duty bound to pay maintenance to respondent No. 3. He placed reliance on the case of **Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori and anr.** in **Criminal Appeal No. 2069 of 2014 (arising out of SLP (CRL.) No. 8056 of 2013)**. He has also placed reliance on the case of **Atmaram S/o Narayan Sanap Vs. Sangita w/o Atmaram Sanap and another** in **Criminal Revision Application No. 286 of 2018**.

11. The trial Court awarded the maintenance at the rate of Rs.5,000/- per month to respondent No. 3. Maintenance was awarded by the Judicial Magistrate First Class under Section 125 of the Code of Criminal Procedure. In terms of Section 26 of the D. V. Act relief under the

provisions of D. V. Act would be in addition to the maintenance awarded by Civil or Criminal Court.

12. It was vehemently argued by Smt. Doke that the applicant is not liable to pay maintenance to respondent No. 3 as respondent No. 2, the wife of the applicant has not been staying with the applicant since the year 1993. In the reply filed by the applicant in the trial Court, the applicant denied the paternity of respondent No. 3. However, during the cross examination he admitted that respondent No. 3 is his daughter. Maintenance was awarded to her under Section 125 of the Cr. P.C.

13. It was argued with vehemence by Smt. Doke that this application under Domestic Violence Act came to be filed before 15 days of passing the decree of dissolution of marriage by the Family Court. She submitted that this was filed with oblique motive. According to her on the date of promulgation of the Domestic Violence Act, respondent Nos. 2 and 3 were not living with the applicant. In such

circumstances whether daughter is entitled to maintenance is the question before this Court.

14. This question is no longer res integra. In the case of **Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori and anr.** (cited supra) the Hon'ble Apex Court has held as under :

“28. In V.D. Bhanot vs. Savita Bhanot, (2012) 3 SCC 183, this Court held that the conduct of the parties even prior to the coming into force of the Protection of Women from Domestic Violence Act, 2005 could be taken into consideration while passing an order under Sections, 18, 19 and 20 thereof. The wife who had shared a household in the past, but was no longer residing with her husband can file a petition under Section 12 if subjected to any act of domestic violence. In V.D. Bhanot (supra) this Court held as follows:

12. We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005.”

15. This clearly shows that conduct of the parties even prior to the coming into force of the Domestic Violence Act would be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. In the case at hand though the applicant has alleged that since the year 1993 the respondent No. 2 has not been living with the applicant, it is falsified by his own subsequent admissions. In the proceeding under Section 125 of Cr.P.C. he admitted that respondent No. 3 is his daughter. She was born in the year 2003. It clearly goes to show that respondent No. 2 was living with the applicant till at least the birth of respondent No. 3. Domestic Violence Act came in to force in the year 2006. Therefore, the conduct prior to the promulgation of the Domestic Violence Act can be gone into. In the case of ***Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori and anr.*** (cited supra) the Hon'ble Apex Court has further held as under :

“31. An act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Domestic Violence Act, 2005 including monetary relief under Section 20, Child Custody under Section 21,

Compensation under Section 22 and interim or ex parte order under Section 23 of the Domestic Violence Act, 2005.”

16. In the case at hand before decree of dissolution of marriage this application came to be filed. Once domestic violence is committed the subsequent dissolution of marriage will not absolve the liability of the applicant from the offence committed and cannot deny the benefit which the aggrieved person is entitled under the Domestic Violence Act, 2005. In the case of **Smt. Sadhana w/o. Hemant Walwatkar Vs. Hemant s/o. Shalikramji Walwatkar** (supra) it has been held as under:

“7. The Hon’ble Apex Court has held that to entertain the petition under the DV Act, there must be relationship as husband and wife. In the present case, the applicant/wife is no more wife from the date of judgment of family Court dated 30th June, 2008. During the pendency of petition under DV Act (Petition No. 1087 of 2009), learned trial Court had granted interim maintenance of Rs.1,000/- per month. The said order was challenged before the Sessions Court. The main issue before the Sessions Court as to whether the divorcee can claim relief under the DV Act. Learned Sessions Judge in Criminal Appeal held that there was no domestic relationship between the parties on the date of filing of the petition and accordingly set aside the order of interim maintenance. The order of Sessions Judge was not challenged and, therefore, it attained finality.”

17. However, this authority has been distinguished by this Court in the case of ***Atmaram S/o Narayan Sanap Vs. Sangita w/o Atmaram Sanap and another***. In the case of ***Ramendra Kishore Bhattacharjee Vs. Smt. Madhurima Bhattacharjee*** (supra) the same principle has been laid down. In the case of ***Jayesh Uttamrao Khairnar & ors. Vs. State of Maharashtra & ors.*** (supra) the facts were completely different. In that case after decree of divorce proceeding under Domestic Violence Act were filed. On these facts this Court held as under:

“The respondent No. 2 was not residing with petitioners since 25th November, 2006. Obviously, during the relevant period of one year or before filing of the application under said act, there was no conjugal relationship between the petitioner No. 1 and respondent No. 2. It is manifest that during the period of said one year the respondent No. 2 had no occasion to suffer any kind of mal treatment at the hands of petitioners. There is no question of giving her protection when she is not residing with petitioners in the common house.”

This authority is not applicable to the facts of the instant case.

18. In the case of ***Nishant Hussain vs. Seema Saddique and another*** reported in 2012 SCC Online Raj 2873, it has been observed that domestic violence is a violence which is committed when the parties are in domestic relationship sharing the same household with an opportunity to commit violence. It was further observed in that case that the parties were residing separately since 2002. Therefore, there was no occasion to commit domestic violence. This decision of Rajasthan High Court is based on the case of ***Inderjit Singh Grewal vs. State of Punjab*** reported in 2012 Cr.L.R. (SC) 16. The decision in the case of Inderjit Singh has been distinguished by the Honourable Apex Court in the case of Juveria Abdul Majid Patni (supra).

19. The decision in the case of ***Tulshiram @ Tulsidas s/o Haribhau Patil and others vs. State of Maharashtra and others*** reported in 2021 All M.R.(Cri) 3694, has no application to the facts of the case in hand as the husband of the wife died due to heart ailment. After his death, application was filed under Domestic Violence Act against the father-in-law, mother-in-law, brother-in-law,

sister-in-law, daughter and son-in-law. It has been observed in this case thus :

“13. The above quoted portion of the application shows that even as per the respondent No. 2, she along with her late husband was in exclusive use and possession of half portion of the first floor, while applicant Nos. 1 & 2 along with another son resided on the ground floor and there were tenants on the second floor of the building. The husband of respondent No. 2 died on 19/6/2018. It is the case of respondent No. 2 herself that she and her late husband were in exclusive use and possession of the part of the first floor while the remaining portion was in possession of applicant Nos. 3 and 4 and applicant Nos. 1 and 2 lived on the ground floor. It is not disputed that applicant Nos. 5 and 6, being the daughter and son-in-law of applicant No. 1, live separately at Nagpur. The question that arises for consideration is whether in the face of such admitted facts, can it be said that the respondent No. 2 was in a domestic relationship with applicants herein and that they were living in a shared household. A perusal of the above quoted definition of the terms “domestic relationship” defined in Section 2(f) and “shared household” defined in Section 2(s) would show that the two are intertwined.

On the basis of these facts, this Court held that the wife and the son were not living in a shared household. This is not the factual situation in the case at hand.

20. Admittedly, respondent No. 3 is the daughter of the applicant. She was born in the year 2003. It means till the year 2003, applicant and respondent No. 2 wife were staying together in a shared household. Definition of Domestic Violence includes economic abuse. The term 'Economic Abuse' has been defined in Section 3(iv) of the Act which reads thus :-

3. Definition of domestic violence. - For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it -

- (a)
- (b)
- (c)
- (d)

Explanation I - For the purposes of this section,-

(iv) "economic abuse" includes -

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance.

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

21. Thus, respondent No. 3 is entitled to be maintained by the applicant. Therefore, applicant is guilty of economic abuse.

22. For the foregoing reasons, the learned Trial Court and the Appellate Court did not commit any error in granting maintenance to respondent No. 3. Application is devoid of any substance. Hence it is dismissed with costs.

(M. G. SEWLIKAR)
JUDGE

ssp