

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****WRIT PETITION NO. 2790 OF 2021**

1. Ms. Kanaka Kedar Sapre	}
(Through Grandmother)	}
2. Mrs. Sudha Mukund Shukla	}
(Mother)	} PETITIONER

V/S.

1. Mr. Kedar Narhar Sapre	}
2. Mr. Narhar Govind Sapre	}
3. Mrs. Sushma Narhar Sapre	}
4. State of Maharashtra	RESPONDENTS

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Mr. Abhijeet Sarwate, Advocate for the petitioner.

Mr. Tapan Thatte a/w. Mr. Amar Patil i/by. Mr. Shantanu Adkar, Advocate for respondents no.1 to 3.

Mr. A.R. Patil, APP for State.

CORAM : SANDEEP K. SHINDE, J.

CLOSED FOR JUDGMENT ON : November 16, 2021.

PRONOUNCED JUDGMENT ON : January 4th 2022.

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of parties, taken up for hearing forthwith.

2. Petitioner's application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ("D.V. Act" for short), was held not maintainable by the learned Judicial Magistrate First Class, Pune. As a result, the application was rejected. In appeal, rejection of order was confirmed. These orders are challenged in the instant writ petition under Article 227 of the Constitution of India.

3. Heard Mr. Sarwate, learned Counsel for the petitioners and Mr. Thatte, Advocate for the respondents.

BACKGROUND FACTS ARE AS UNDER :

4. Petitioner no.1 is the minor daughter of late, Suchita Kedar Sapre ("deceased" for short). Respondent no.1 is father of petitioner no.1; respondents no.2 and 3 are grandfather and grandmother of petitioner no.1; whereas, petitioner no.2 is mother of deceased, Suchita. It is petitioner's case that, Suchita got married to respondent no.1 on 24th November, 2009 whereafter petitioner no.1 was born on 7th October, 2012. Throughout, Suchita was neglected by her husband and

in-laws. She was subjected to physical, verbal and economic abuses by the respondent, due to which, she suffered serious sickness and was admitted in the hospital in April, 2013. Suchita passed away on 27th October, 2013. Her mother and father were taking her care. Petitioners alleged, the respondents did not bother to look after Suchita in her lifetime and even during her illness. Petitioner no.2 (mother of Suchita) would claim that, she had spent Rs.60,00,000/- for Suchita's treatment and would also claim that, she had gifted gold ornaments in Suchita's marriage, which are in custody of mother-in-law, respondent no.3 herein. On the backdrop of these facts, petitioners presented an application under Section 12 of the D.V. Act, seeking following reliefs :

“a. The application may kindly be allowed.

b. That as per the list mentioned herein above in Para 21, the respondent no.3 may kindly be directed to hand over the same to applicant no.1 through applicant no.2.

c. That respondent no.1 may kindly be directed to pay the amount of Rs.60,00,000/- (Rs. Sixty Lacs) to the Applicant no.2 spent towards the medical expenses and Hospitalization expenses of Late, Mrs. Sucheta.

d. That all the respondents may be directed to pay Rs.50,00,000 as compensation to each Applicant.

e. The cost of the present application Rs.50,000/- may be awarded from the respondents.

f. That the applicants craves the leave to amend/alter the application and lead oral as well as documentary evidence if and when necessary.

g. Any other just and equitable orders may please be passed.”

5. Respondents sought dismissal of the application, inter-alia, questioning locus of the petitioners and maintainability of the present application under Section 12 of the D.V. Act; reason being, reliefs under the said Act, could not have been sought on behalf of deceased, Suchita. In consideration of the facts of the case and objection raised by the respondents as to maintainability of the application, the objection was upheld. As a result, petitioner's application was rejected vide order dated 11th March, 2019. In appeal, rejection order was confirmed by the Additional Sessions Judge, Pune vide order dated 16th March, 2021. These orders are assailed in this petition.

6. Question is, whether an application presented by the petitioners under Section 12 of the D.V. Act on behalf of deceased, Suchita Sapre, seeking (i) monetary relief under Section 20(b) i.e. reimbursement of medical expenses incurred by petitioner no.2 for the treatment of deceased, Suchita; (ii)possession of “Streedhan” of late, Suchita under Section 19(8) of the D.V. Act; and (iii)compensation under Section 22 from the respondents, was maintainable ?”

7. Before answering the question, it may be noted that; Suchita died in the year 2013; whereas; petitioners presented an application under Section 12 in April, 2015 ON BEHALF of deceased, Suchita for various reliefs.

8. The Protection of Women from Domestic Violence Act, 2015 has been enacted to protect the Woman, from being victim of domestic violence and to prevent occurrence of domestic violence. It covers those women who are or have been, in relationship with the “abuser”; where both the parties have lived together in a

shared household and related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. The Act empowers the Magistrate to pass, Protection Orders under Section 18; Residence Orders under Section 19; Monetary Reliefs order under Section 20 and Compensation Orders under Section 22 of the D.V. Act. Section 12 of the Act, enables an “aggrieved person” or a Protection Officer or any other person on behalf of the aggrieved person (emphasis supplied), to present an application to Magistrate seeking one or more reliefs under the Act. The expression “aggrieved person” means any woman, who is, or has been in domestic relationship with the respondents and who alleges to have been subjected to any act of domestic violence by the respondents. The expression “domestic relationship” means 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 relationship in the nature of marriage, adoption or are family members living together as a joint family. Therefore, either “aggrieved person” or “a person on behalf of aggrieved person”, may move an

application under Section 12 of the Act, seeking one or more reliefs under the Act.

9. Herein, the petitioners do not claim themselves to be “aggrieved person” but would assert their right to present an application under Section 12 of the D.V. Act on behalf of the deceased, who according to them, was an “aggrieved person”. Therefore, in essence, petitioners were seeking enforcement of personal rights of deceased, Suchita, which she had not sought in her lifetime. In the backdrop of facts aforestated, the rights sought to be enforced by the petitioner, by presenting an application under Section 12 of the D.V. Act, was clearly not maintainable for the following reasons :

(i) the right to claim monetary reliefs, protection order and compensation under the D.V. Act, are personal-statutory and inalienable rights of the “aggrieved person”. These rights extinguish on the death of “aggrieved person”. For that reason, such rights were not enforceable by legal representatives of “aggrieved person”.

(ii) expression “aggrieved person” has to be understood and given restrictive meaning, in view of the Statement and Object and Reasons of the Act. Defined expression “aggrieved person” is not inclusive and thus by process of interpretative explanation, its scope cannot be expanded like suggested by the petitioners, as it would counter the Scheme and Object of the Act and would defeat the intention of legislation.

(iii) although “any other person” can present an application under Section 12 of the D.V. Act, on behalf of “aggrieved person”, nevertheless, such “other person” cannot maintain an application independently of an “aggrieved person”. Infact, Section 12 of the D.V. Act, simply enables, the “aggrieved person” to present an application under the Act through “any other person”. That being the Scheme of

the Act, “aggrieved person” must be living (alive), while presenting the application.

. Therefore, petitioners attempt to claim rights through deceased, Suchita, not being acknowledged by the provisions of the D.V. Act, application has been rightly rejected by the trial Court and Appellate Court.

10. For the foregoing reasons, the petition is dismissed. Rule is discharged. However, dismissal of the petition, shall not forbid the petitioners from adopting such other proceedings against the respondents for enforcing their rights, if any, in accordance with law.

11. Petition is disposed of.

(SANDEEP K. SHINDE, J.)

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