

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.4119 OF 2021

Rehana Mushtaque Temrekar] ... Petitioner

Vs.

Mushtaque Yusuf Temrekar & Anr.] ... Respondents

...

Ms. Mariyah Khatkhatay i/b Mr. Hakim Salim A.R. for the petitioner.

Mr. Vaibhav Sugdare for the respondent.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 24TH JUNE, 2022.

P.C.:-

1. The petition is filed by the wife challenging order passed by the Additional Sessions Judge, City Civil & Sessions Court, Greater Mumbai in Criminal Appeal No.137 of 2021, by which the order passed by the Metropolitan Magistrate on 06/03/2021 in Criminal Case No.11/DV/2019 is set aside.

2. The petitioner-wife instituted proceedings for domestic

violence by pleading that her marriage with the respondent was solemnized on 16/05/1994 in accordance with the Islamic Law and, after the marriage, she started to cohabit with her husband in her matrimonial home. However, on account of discord, she instituted proceedings under the Protection of Women from Domestic Violence Act (for short, **“the D.V. Act”**), but on the respondent offering a settlement, she withdrew the proceedings under the D.V. Act filed by her before the Family Court at Bandra. Under the said compromise, they started residing together, but as there was a neglect on the part of the husband, she moved an application under Section 23 of the D.V. Act, claiming interim maintenance of Rs.10,000/- per month for herself and a rent of Rs.25,000/- along with interim compensation of Rs.5 lakhs.

3. The application was contested by the respondent-husband by denying the domestic relationship and it was specifically stated that he divorced the petitioner, way back in the year 1997 through a Kazi, as per the Muslim Shariyat Law and, since then, he is residing separately and the petitioner is residing with her father on the given address. He submits that an amount of Rs.1,50,000/- was paid by him towards settlement of previous proceedings instituted vide Application No.110/DV/2015 under the D.V. Act. In the wake of the rival pleadings and also considering the contentions of the respondent-husband that he has no source of income to pay maintenance to his wife, as he

does not have any permanent job, the learned Magistrate, after referring to various authoritative pronouncements, where despite separation of the husband and wife, the maintenance came to be awarded to the wife under the D.V. Act, allowed the application and directed the respondent to pay interim maintenance of Rs.7,000/- per month from the date of filing of the application. The maintenance towards the daughter was denied since she attained majority. The prayer for interim rent or alternative accommodation as well as interim compensation was, however, rejected.

4. The respondent-husband approached the appellate court by instituting an appeal under Section 29 of the D.V. Act and though a stand was taken that he had suffered a paralytic attack and was unable to attend to any work, the court found that the appellant is an able bodied person and there is no indication that he cannot perform the job of a taxi driver. His plea was, therefore, declined and as far as the other ground that his relationship was severed by a *Talaq* in the year 1997 itself, and by referring to a settlement effected earlier, in the first D.V. proceedings, the appellate court arrived at a conclusion that since the settlement had occurred, the domestic violence, which was alleged prior to the alleged divorce, cannot be taken into consideration. Learned Judge records that in the said proceedings, a settlement was arrived at and the petitioner has withdrawn the proceedings and a pursis was also filed in which the wife accepted Rs.1,50,000/-.

He submits that the pursis does not state that the parties are going to co-habit together. It is, on this ground, that the order of the Magistrate is set aside by the appellate court. Pertinent to note that in paragraph No.12 of the said order, the learned Judge makes the following observations:

“12. It is also to be noted that according to the appellant, he gave divorce (‘Talaq’) to the respondent, as per Shariat Act, in the year 1997. The translated copy of deed of divorce is also filed on record. It was also raised in the proceeding before the Family Court. The Family Court had decided the said proceeding in favour of the respondent. But, the Hon’ble High Court had remanded that for reconsideration of validity of ‘Talaq’. Therefore, if reunion was to be taken place after settlement, some document would have been executed between the parties. But, no such document is executed.”

5. Further, recording that as far as the domestic violence before the alleged reunion is concerned, since the issue is already settled between the parties, the said alleged violence cannot be taken into the present proceedings. I do not think that the appellate court is right on the said aspect. The provisions of D.V. Act, being an enactment, which contains provisions for effective protection of the rights of women, guaranteed under the Constitution, who are the victim of domestic violence of any kind occurring within the family, defines the terms of an ‘aggrieved person’ in 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. Domestic relationship defined in Section 2(f) 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.”*

6. Another important definition is ‘shared household’ under Section 2(s), which would also mean to cover a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent. In the wake of the aforesaid provisions, the definition of the ‘domestic violence’ under Section 3 will have to be perused.

7. The petitioner had alleged domestic violence on account of domestic relationship, which she shared with the respondent and though at one point of time, she had filed proceedings under D.V. Act, a compromise was effected, but in my considered opinion, that will not wipe out the relationship, which continued particularly when, she is disputing the divorce.

8. In the wake of the above, the order passed by the

Additional Sessions Judge, City Civil Court, Mumbai, cannot be sustained. As far as the quantum of amount of maintenance is concerned, the appellate court has already held that the stand taken by the respondent that he is unable to earn for himself, cannot be accepted and the learned Magistrate, who has considered the relevant material on record, has awarded the interim maintenance of Rs.7,000/- per month in favour of the petitioner-wife.

9. The impugned order passed by the Additional Sessions Judge, City Civil Court, Mumbai, is set aside. The order passed by the learned Magistrate is restored, with the liability being enforced to pay the maintenance, as directed by the learned Magistrate. The petition is disposed off.

10. Needless to state that the aforesaid observations are limited to the purpose of determining the validity of the impugned judgment, involving the interim maintenance in favour of the petitioner-wife and will not in any way influence the trial judge in disposing off the pending applications.

[SMT. BHARATI DANGRE, J.]