

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 66/2020
WITH
CRIMINAL WRIT PETITION NO. 1049/2019

CRIMINAL WRIT PETITION NO. 66/2020

1. Yogita w/o Sachin Wankhade,
Age about 32 years, Occ. Household,
 2. Ku. Pinglakshi D/o Sachin Wankhade
age about 08 years, Occ. Education,
by GAL Petition No. 1,
- Both R/o. Talwel, Tq. Chandur Bazar,
Dist. Amravati.
A/p Shrikrushna Colony, behind Police
Station, Chandur Bazar, Dist. Amravati
Mob. 8766412513.

... **PETITIONERS**
(Ori. Petitioners)

VERSUS

Sachin S/o Rameshrao
Wankhade, age about 37 years
Occ. Service, R/o. Mangrul
(Bhilapur) Tq. Morshi, Dist.
Amravati, Mob. 8411047475

... **RESPONDENT**
(Ori.respondent)

Mr. Raju Kadu, Advocate for petitioners,
Mr. V. B. Bhise, Advocate for respondent

WITHCRIMINAL WRIT PETITION NO. 1049/2019

Shri Sachin S/o Rameshrao
Wankhade, aged about 37 years,
Occ. Police Constable, R/o.
Mangrul (Bhilapur) Tq. Morshi,
Dist. Amravati, Mob. 8411047475

... PETITIONER
(Ori. N.A.)

VERSUS

1. Sau. Yogita w/o Sachin Wankhade,
Aged about 31 years, Occ. Household,
2. Ku. Pinglakshi D/o Sachin Wankhade,
age about 07 years, Occ. Student, Minor
through Mother guardian Respondent-1.

Both R/o. Talwel, Tq. Chandur Bazar,
Dist. Amravati.

... RESPONDENTS
(Org. App.)

Mr. Vipul B. Bhise, Advocate for the petitioner.
Mr. Raju Kadu, Advocate for respondents.

<u>CORAM</u>	:	<u>VINAY JOSHI, J.</u>
<u>RESERVED ON</u>	:	<u>16.06.2022.</u>
<u>PRONOUNCED ON</u>	:	<u>29.07.2022</u>

JUDGMENT :

Both petitions are taken up for final disposal by consent of

the parties.

2. These are the rival petitions in between the husband and wife raising common challenge to the order dated 26.09.2019 in criminal appeal No. 19/2015 under Section 29 of the Protection of Women from Domestic Violence Act, 2005 ('D. V. Act'). In criminal writ petition No.1049/2019, the husband has challenged the impugned judgment and order stating to be illegal, perverse and against the provisions of law. Whilst in criminal writ petition No 66/2020, the same judgment has been challenged by wife along with the judgment of the Trial Court in Misc. Cri. appln No. 28/2013. Since the challenge is common, for the sake of convenience, both petitions are heard and taken together for disposal. Hereinafter husband Sachin is referred to as respondent, whilst wife Yogita is referred to as petitioner throughout.

3. Initially, the petitioner – wife has applied in terms of Section 12 of the D. V. Act, to the Magistrate claiming the multiple reliefs as available under the provisions of D. V. Act. It is petitioner's case that she married with the respondent on 11.06.2011 as per Hindu Customary Rites. After marriage, she resumed cohabitation at the house of respondent and living with her in-laws. At the relevant time, the respondent was serving in Police Department, posted at taluka Wani.

For initial few months, the respondent avoided to take petitioner-wife at Wani, however intermittently he was visiting to village Mangrul, where she was living with in-laws. During wedlock, she blessed with female child. It is the petitioner's case that during her stay with her in-laws, she was humiliated, abused and made to work like slave. Due to her insistence, the respondent took her to Wani in the month of December 2011. While the petitioner was living with her husband at Wani, she found a photograph, ornaments and money receipt in the name of one lady in the respondent's drawer, on which she suspected about his illicit relationship. When the petitioner enquired with the respondent, he had beaten her and left her at village Mangrul with her in-laws. Somehow, the petitioner-lady stayed there, however she was again subjected to the harassment. Petitioner alleged that her father-in-law was keeping ill-eye on her, whilst mother-in-law was humiliating and taunting her. Finally due to unbearable harassment, she returned to her parental house. It is petitioner's case that respondent has not made adequate provision for her food, clothing and medicines. Precisely, by alleging a case of domestic violence, she had approached to the Magistrate.

4. The parties led evidence in the D. V. proceeding. The learned Magistrate held that the petitioner has failed to make out a

case of domestic violence, however awarded maintenance to the petitioner-wife @ Rs. 3,000/- per month vide order dated 07.04.2015. The petitioner-husband has not challenged the said order. However, the petitioner-wife being dissatisfied by the order, has filed an appeal in terms of Section 29 of the D. V. Act. The Appellate Court has confirmed the finding that the petitioner failed to establish domestic violence, however modified the order of maintenance @ Rs. 7,000/- per month for minor daughter. Both the Courts below held that the petitioner failed to prove a case of domestic violence. However, the Magistrate granted maintenance to the wife whilst the Appellate Court awarded maintenance for minor daughter at enhanced rate.

5. Learned counsel appearing for the respondent-husband strenuously argued that unless a party alleges and proves an act of domestic violence in the capacity of aggrieved person, she is not entitled for any relief as provided under the D.V. Act. The respondent heavily relied on the decision of this Court in case of ***Koushik S/o Anil Gharami Vs. Sau. Sangeeta Koushik Gharami and others, 2014 ALL MR (Cri) 2398*** , wherein it is held that the monetary relief can be granted under the D.V. Act provided there is a domestic violence. On the same line, reliance is placed on the decision of this Court in case of ***Prakash Kumar Singhee Vs. Amrapali Singhee, 2018(5) Mh.L.J. 665,*** in

which this Court has reiterated the position that the provisions under the D.V. Act cannot be invoked unless a party alleges an act of domestic violence and approach to the Court in the capacity of the aggrieved person. No doubt, the reliefs contemplated under the D.V. Act are available to the aggrieved person who alleges that she is or has been in domestic relationship with the husband and was subjected to any act of domestic violence by the respondent.

6. Besides that, on facts, it is argued that the petitioner-lady miserably failed to establish the domestic violence within the meaning of Section 3 of the D. V. Act. He would submit that the Trial Court as well as the First Appellate Court were right in holding that the petitioner has failed to make out a case of domestic violence. The learned counsel for the respondent took me through the evidence and impugned judgment of the Appellate Court to state that on mere suspicion of illicit relationship, the wife separated and thus, there is no material to hold that there has been instances of domestic violence. It is submitted that the Courts below though held that there was no domestic violence, however seriously erred in awarding monetary relief. He would submit that both the Courts below failed in appreciating the law laid down by this Court in case of Koushik s/o Anil Gharami (*supra*) in that regard.

7. The learned counsel appearing for the respondent would submit that the petitioner-wife has also applied to the Magistrate for grant of maintenance in terms of Section 125 of the Code of Criminal Procedure. In said proceeding, the learned Magistrate has granted interim maintenance to the petitioner and her daughter @ Rs. 700/- per month each and the said application is still pending. The respondent would submit that the amount of maintenance/monetary relief cannot exceed to 25% of the husband's net salary. To support said contention, he relied on the decision of the Supreme Court in case of *Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy*, (Civil Appeal No. 5369/2017, decided on 19.04.2017). On these grounds, the respondent seeks for setting aside the order of the Appellate Court awarding maintenance @ Rs. 7,000/- per month.

8. Per contra, the learned counsel appearing for petitioner-wife would submit that both the Courts below committed serious error in holding that the petitioner has failed to establish that there has been domestic violence. The learned counsel appearing for the petitioner has relied on the decisions of this Court in cases of *Mrs. Jovita Olga Ignesia Mascarenhas E Coutinho Vs. Mr. Rajan Maria Coutinho and another*, 2010 ALL MR (Cri) 3107 and *Sau. Sarita w/o Sureshkumar Maladhare Vs. Shri Sureshkumar S/o Dhaniram Maladhare*, 2018 ALL MR (Cri)

190 to contend the term 'Domestic Violence' has to be widely construed. It is submitted that the petitioner-wife led evidence specifying the instances of domestic violence, however the Courts below failed in appreciating evidence in proper perspective. It is submitted that any act or omission or commission which causes mental, physical, emotional, or verbal, abuse amounts to domestic violence. It is his contention that the Trial Court has led much stress on the point of allegation of respondent's illicit relations and without considering other material, misdirected itself in recording negative finding about the domestic violence. He would submit that though interim maintenance has been awarded under Section 125 of the Code of Criminal Procedure, however the remedy under the D.V. Act is independent and additional to other. It is submitted that the respondent-husband in his reply, to the D. V. application has made serious allegations pertaining to the chastity of petitioner and therefore, it also amounts to the act of domestic violence. In support, he relied on the decision of the Supreme Court in case of *Vijaykumar Ramchandra Bhate Vs. Neela Vijay Kumar Bhate, (2003) 6 SCC 334*. Ultimately, he has prayed for grant of monetary and other reliefs.

9. It is inescapable position of law that the aggrieved person and her children are entitled for monetary relief, provided that the

Magistrate comes to the conclusion that the domestic violence has been proved. Though both Courts below referred to the decision of this Court in case of Koushik s/o Anil Gharami (*supra*), however erred in appreciating the same in proper perspective. However, at the threshold, it is to be seen that whether the petitioner-lady has proved the act of domestic violence entitling her for the monetary relief in terms of Section 20 of the D. V. Act.

10. The petitioner in her application has stated about her marriage and initial place of residence at her in-laws' house at villager Mangrul. She pleaded that the respondent did not take her to Wani for cohabitation where he was posted in the Police Department. She pleaded that during her stay at Village Mangrul, her in-laws were harassing her as well as the respondent was not interested to take her to Wani. It is her case that when she went to Wani, she found some objectionable things on which she suspected about respondent's illicit relations. On that insistence, she was humiliated, beaten and left her at village Mangrul. It is her case that during her stay at Mangrul, she was humiliated, her father-in-law kept ill-eye as well as mother-in-law was taunting, humiliating and harassing her. In order to substantiate case of harassment amounting to domestic violence, the petitioner led evidence on affidavit presenting her case. She was cross-examined by

the respondent. As against this, respondent-husband led evidence denying the allegations of harassment. He has blamed entire fault on the petitioner. He would submit that the petitioner-lady was of quarrelsome nature and was not interested in living with him. It is alleged that she had illicit relations with one of her relative. It is alleged that the petitioner was of suspicious nature and thus, for no reason, she left his company. The respondent also led evidence to support his defence.

11. The Trial Court though stated that there are allegations about harassment, however has only considered the allegations about illicit relationship of her husband. The Trial Court observed that the petitioner-lady has not examined any witness to corroborate her testimony and on that count, disbelieved her case. Similar is the finding recorded by the Appellate Court. There appears to be no valid reason for rejection of the testimony of the petitioner-wife on the count of harassment. Rather both the Courts below have not deliberated on said aspect.

12. Before going to the evidence, it is necessary to consider the scope of the term 'Domestic Violence' as has been set out under the D. V. Act, wherein wide meaning is given to the term 'domestic violence' which covers various acts including physical, sexual, verbal, emotional

and economical abuse. Having regard to the object of the act, the term domestic violence has been comprehensively set out. On perusal of the orders passed by both the Courts below, it appears that they do not find it necessary to consider evidence of the petitioner's ill-treatment by her husband and in-laws. The Trial Court as well as Appellate Court failed to discuss the evidence on the point of ill-treatment.

13. The petitioner-lady who is living with child at her parental house led evidence about various acts occurred during her stay at her matrimonial house. She has stated in evidence that soon-after the marriage, for considerable time, the respondent-husband stayed separately at his working place, despite her insistence for joint residence. She deposed that in his absence, her in-laws used to humiliate and quarrel with her on flimsy grounds. She deposed that the behaviour of her father-in-laws was indecent, whilst mother-in-law used to taunt and harass her. It is her evidence that when she has exposed the respondent's illicit relations, respondent has beaten, threatened and left her at her parents' house. The Trial Court relied on some admissions of petitioner but they are insignificant. However, nothing has come on record to discard the petitioner's case of harassment. The petitioner's evidence that soon-after the marriage and thereafter also she was compelled to live with her in-laws,

obviously would have adverse, mental and psychological impact. Moreover, she stated about physical abuse and total neglect to her needs which also amounts to economical abuse.

14. The petitioner stated that she found one photograph and receipt in the name of a lady, however, respondent has tried to explain the same in his evidence. Pertinent to note that in reply, the respondent also alleged about the petitioner's illicit relations. Such allegation without substance would also amounts to mental and emotional abuse. Both Court's below failed to appreciate the evidence of lady in proper perspective. One has to understand that there may not be direct evidence of witnesses about the domestic violence, as always it is family affair within four walls. There is no substantial reason to discard the words of a deserted lady. In view of that, it can be safely held that the petitioner-lady has established that she was subjected to domestic violence.

15. The Trial Court has awarded maintenance @ Rs. 3000/- per month for wife, whilst the Appellate Court has raised quantum of maintenance to the tune of Rs. 7,000/- for child. Since the petitioner has proved the case of domestic violence, both are entitled for monetary relief. As regards to the quantum of maintenance, the Trial Court without deliberation fixed the quantum @ Rs. 3000/- per month.

The Appellate Court has considered the respondent's salary slip for the month of April 2014. On the basis of which, fixed the quantum at the rate of Rs. 7,000/- per month. Several salary slips have been produced. For instance, perused salary slip for the month of January 2021 showing total emolument to Rs. 55,600/- and net payment of Rs. 23,377/-.

16. The learned counsel appearing for the respondent relying on the decision of the Supreme Court in case of Kalyan Dey Chowdhury (*supra*) would submit that the maintenance amount shall be to the extent of 25% of the net salary of the husband. In-fact, no such ratio was laid down by the Supreme Court restricting the maintenance amount to the extent of 25% of the net salary. In the same judgment, it has been observed that amount of alimony must be befitting to the status of the parties and the capacity of the spouse which is depending on the factual circumstance. Pertaining to note that the respondent's total pay was to the tune of Rs. 55,600/- whilst deduction on account of General Provident Fund was of Rs. 28,000/- which itself appears to be increased for some purpose. While determining the quantum of maintenance, the status of the parties, reasonable need of the wife and dependent children, financial capacity of the husband, standard of living of the parties and cost of living would be the relevant factors.

17. Having regard to all above relevant factors, the petitioner-wife and her minor daughter are entitled for maintenance at the rate of Rs. 4,000/- per month each which would be just and appropriate to meet the needs of food, clothing, medicines of both of them. So far as the other reliefs claimed by petitioner-wife are concerned, besides granting protection from domestic violence, no case is made out for grant of other reliefs.

18. In view of above discussion, Criminal Writ Petition No. 1049/2019 filed by husband stands dismissed.

19. Criminal Writ Petition No. 66/2020 is partly allowed. The impugned judgments and orders passed by the Appellate Court is modified as below:-

(A) Criminal Appeal No. 19/2015 is allowed to the following extent.

(i) Misc. Criminal Application No. 28/2013 is partly allowed.

(ii) The Non-applicants (of Misc. Criminal Application No. 28/2013) are restrained from committing any act of domestic violence against the applicant-lady.

(iii) Non-applicant No.1 (husband) is directed to pay monthly amount of Rs. 4000/- each towards maintenance to applicant-wife and minor daughter which is inclusive of medical, food and clothing expenses from the date of initial order passed in Misc. Criminal Application No. 28/2013 i.e. from 07.04.2015.

(iv) The other reliefs claimed in Misc. Criminal Application No. 28/2013 stands rejected.

(VINAY JOSHI, J.)

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