

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

CRIMINAL WRIT PETITION No. 206/2017.

1.Rahmat Ali Khan Walli Mohd.
Ali Khan, Aged about 41 years,
Occupation - business;

2.Walli Mohd. Ali Khan,
Aged about 53 years, Occupation -
Business;

3.Begum Walli Mohd. Khan,
Aged about 53 years, Occupation -
Private;

4.Niyamat Ali Khan Walli Mohd.
Khan, Aged about 33 years, Occupation -
Business;

All resident of School No.7, IDUP,
Plot No.285, Katol, Tahsil Katol,
District Nagpur.

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PETITIONERS.

VERSUS

1/Smt. Shabana Begum Rehmatali Khan,
D/o. Mohammad Mehaboob Sheikh,

2.Mohd. Mohinoor Khan s/o Rahmat
Ali Khan, Minor, through mother
guardian / respondent no.1.

Rgd.

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resident of Near M.M. Taj School,
Plot No.134/A, Thakur Plot, Teacher
Colony, Tajbagh, Ayodhya Nagar,
S.O. Nagpur (M.S.). 440024.

... **RESPONDENTS.**

Mr. S.M. Nafde, Advocate for Petitioners.
Mr.P.D. Randive, Advocate for Respondents.

CORAM : VINAY JOSHI, J.

CLOSED FOR JUDGMENT ON : 22.06.2022.
JUDGMENT PRONOUNCED ON : 04.08.2022.

JUDGMENT :

Heard learned counsel for the parties.

2. Being aggrieved and dissatisfied by the judgment and order dated 17.02.2017 passed by the Sessions Judge, Nagpur in Criminal Appeal No.203/2016, petitioners have invoked the inherent jurisdiction of this Court seeking quashing of the said judgment and order, stating it to be unreasonable, illegal and unsustainable in law.

Rgd.

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3. Petitioners have been arrayed as respondents in Criminal Application No.2598/2014 filed by respondent – wife in the capacity of aggrieved person. Wife has filed this application before the Magistrate in terms of Protection of Women from Domestic Violence Act, 2005 (D.V.Act), seeking multiple reliefs, as available under the D.V.Act. Petitioners/respondents have resisted said application denying the act of domestic violence, as alleged. The learned Magistrate held that applicant – wife failed to establish that she suffered domestic violence at the hands of respondents and accordingly dismissed the application vide order dated 01.10.2016.

4. Aggrieved by the said order, wife has filed Criminal Appeal No.203/2016 in terms of Section 29 of the D.V. Act, claiming reliefs as sought in her application before the Magistrate. The Appellate Court upheld that the wife failed to establish physical abuse, however, by holding that she has established economic abuse, passed an order of maintenance @ Rs.2000/- per month for her and an equal amount for her male minor child.

5. The learned Counsel for petitioners would submit that

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when both the Courts below have held that the wife failed to establish domestic violence, the Appellate Court fell in error in granting maintenance. It is submitted that unless wife proves her case of domestic violence as an aggrieved person, she is not entitled to any relief as provided under the provisions of D.V. Act. In support of said contention, petitioners have relied on decisions of this Court in cases of – (1) **Prakash Kumar Singhee .vrs. Amrapali Singhee - 2018 [5] Mh.L.J. 665**; (2) **Gugudas Sanvalo Naik and others .vrs. Saanvi Gurudas Naik and others - 2018 All M.R. (Cri) 2375**; (3) **Koushik .vrs. Sangeeta Koushik Gharami - 2018 All MR (Cri) 2398**; and (4) **Vijayanand Dattaram Naik and others .vrs. Smt. Vishranti Vijayanand Naik and others - 2019 All MR (Cri) 3519**. There is no dispute that the act of domestic violence is prerequisite for a Magistrate to exercise powers under the D.V. Act for grant of any relief as provided under the Act.

6. The learned Magistrate has held that the applicant has failed to establish the act of domestic violence, however, the said order is reversed by the Appellate Court to the extent that though the wife has failed to establish physical abuse, however, economical

abuse has been proved.

7. From perusal of the provisions of the D.V. Act it emerges that it has been enacted for effective protection of rights for women, who are victim of violence of any kind occurred in the family. The enactment is a sort of redressal provided to the aggrieved person, who is or has been in domestic relationship with the spouse. The term 'domestic violence' has been widely defined in Section 3 of the D.V. Act. It includes economic abuse also. Any kind of deprivation of aggrieved person of any economic or financial resources would encompass within the term 'economic abuse' as defined under Section 3[d][iv][a] of the D.V. Act.

8. The learned Counsel appearing for wife would submit that any kind of economical abuse has been covered within the term 'domestic violence'. To support said contention, he has relied on the decisions of this Court in cases of (1) **Jayashri Shamshuddin Talapdar .vrs. Samshuddin Karim Talapdar and another - 2018 All MR (Cri) 2305** and (2) **Prakash Kumar Singhee .vrs. Amrapali Singhee - 2018 [5] Mh.L.J. 665** (which is also relied upon by

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petitioners). There can be no dispute about the said proposition, since the statute itself has included the term 'economic abuse' as one of the kind of domestic violence.

9. Coming to the facts, the respondent-wife has stated in her evidence about several acts of domestic violence, however, the learned Magistrate has held that the wife has failed to establish the act of domestic violence, as well as the same was upheld to the extent of physical abuse by the Appellate Court. Pertinent to note that wife has not challenged the said finding of the Appellate Court, and thus, it can be said that it is not a case of physical abuse. However, on the point of economical abuse, it is her evidence that due to matrimonial harassment, she was compelled to reside with her parents. Wife has stated that she does not have any source of income, and is unable to carry her responsibility, as financial position of her parents is weak. She also deposed that the petitioner – husband is having ample source of income. He is running sports and garments shop, from which he earns Rs.50,000/- per month. Though husband has denied the source of income, however, he contends that his brother owns the sports shop where he is serving as

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an assistant. However, husband has not specified as to how much income he derives from the said business. The burden lies on the husband to establish his income, since it is within his special knowledge.

10. There is no denial to the fact that since long the wife is residing with her parents. There is no statement or material on record to indicate that husband has provided any financial aid to the wife during said period. The responsibility of husband is not limited to the household necessity of the aggrieved person, but, towards child also. Husband has merely stated that since the wife is residing at her parents house without any valid reason, she is not entitled for maintenance. As a matter of fact, wife is residing separately since she suffered with matrimonial hassle. The wife has approached to the Family Court in terms of Section 125 of the Code of Criminal Procedure, wherein her claim was upheld, as regards to the claim of maintenance. It is apparent that the husband has not made any provision regarding maintenance of wife. Admittedly for a long period, she has been residing with her child at the mercy of her

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parents, and no financial resources have been provided by the husband. Therefore, the finding of the Appellate Court that it is a case of economical abuse amounting to domestic violence is well sustainable. The Family Court in its order dated 09.04.2021, has considered the quantum of maintenance granted under the D.V. proceeding, and thus, the said cannot be disturbed. Moreover, the amount of maintenance as awarded by the Appellate Court to the extent of Rs.2000/- per month for a lady and Rs.2000/- to a child, is quite reasonable, rather the same is bare minimum requirement for survival. In view of above discussion, the impugned judgment and order does not call for interference. Criminal Writ Petition is liable to be dismissed, and is dismissed accordingly. No costs.

JUDGE