

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

CRIMINAL APPLICATION [APL] No. 333/2018.

1.Mr.Rajendra s/o Sheshrao Patil,
Aged about 43 years, Occupation -
business;

2.Shantabai Sheshrao Patil,
Aged about 60 years, Occupation -
Pensioner;

3.Vilas s/o Sheshrao Patil,
Aged about 50 years, Occupation -
Professor;

4.Kiran s/o Vilas Patil,
Aged about 40 years, Occupation -
Household work;

All of above resident of Pet Ahmadpur,
Ward No.3, Ashti, Tq. Ashti,
District Wardha.

... **APPLICANTS.**

VERSUS

Sau.Sapna w/o Rajendra Patil,
Aged about 37 years, Occupation
Nil, resident of c/o. Shyamkant K. Raut,
Ushanagar, Sai Nagar, Amravati,
Tq. and District Amravati.

... **NON-APPLICANT.**

Mr. S.D. Chopde, Advocate for Applicants.
Mr.S.S. Dhengale, Advocate for Non-applicant.

CORAM : VINAY JOSHI, J.

CLOSED FOR JUDGMENT ON : 29.06.2022.
JUDGMENT PRONOUNCED ON : 03.08.2022.

JUDGMENT :

Heard learned counsel for the parties.

2. Husband and his relatives have raised challenge to the judgment and order dated 26.08.2015 passed by the Judicial Magistrate First Class, Amravati in proceedings under Protection of Women under Domestic Violence Act bearing Misc. Criminal Application No.110/2012, whereby the learned Magistrate has granted monetary relief and passed prohibitory order restraining the act of domestic violence. The said order came to be confirmed in Criminal Appeal No.6/2017 by the Additional Sessions Judge,

Rgd.

3

Amravati, because of which the parties are before this Court.

3. The non-applicant – wife has filed an application in terms of Section 12 of the D.V. Act before the Magistrate seeking multiple reliefs, as made available under the provisions of D.V. Act. Reliefs were claimed on account of domestic violence at the hands of applicants. The said application was resisted by applicants on facts as well as on the count of lack of jurisdiction.

4. The learned Magistrate has held that there has been domestic violence and accordingly has passed prohibitory order and granted maintenance @ Rs.6000/- and an additional amount of Rs.3000/- per month towards rent. The learned Magistrate while passing said order, has turned down the objection as regards to jurisdiction. The said order came to be confirmed in appeal.

5. Briefly stated, the non-applicant – wife got married with applicant no.1 Gajanan [husband] on 27.07.2011 at village Warud, District Amravati. Soon after the marriage, she resumed cohabitation at her matrimonial house i.e. at Taluq Ashti, District Wardha. She was subjected to harassment on various counts. She has alleged that

Rgd.

4

her husband and in-laws used to abuse, starve and humiliate her. She also alleges that her husband has avoided physical relations, and thus, it is emotional abuse.

6. The husband denied the allegations, but, contended that the non-applicant – wife was not interested in living in joint family. She was of quarrelsome nature, and left his company without justifiable reason. The learned Counsel appearing for the applicant – husband has brought to the notice that the application of wife for restitution of conjugal rights came to be rejected, as well as at the instance of applicant, the decree of divorce has been passed on the ground of cruelty. Moreover, it is submitted that the husband and his nearer relatives have been acquitted by the criminal Court under the charges of Section 498-A of the Indian Penal Code.

7. The impugned orders are primely challenged on the ground of lack of jurisdiction. It is argued that the marriage was performed at Village Warud, District Amravati where the wife was residing with her parents. After marriage, they stayed at Taluq Ashti, District Wardha, and thus Amravati Court has no jurisdiction at all.

5

In other words, it is submitted that the wife never stayed at Amravati, and therefore, both the Courts below have committed serious error in rejecting the objection about jurisdiction, which goes to the root of the matter. To substantiate said contention, the applicant/husband has produced copy of judgment passed by the Family Court, Amravati in a petition filed by wife for restitution of conjugal rights (Petition No.A-204/2011), which came to be dismissed on the count of lack of jurisdiction. Likewise, applicants have produced copy of the judgment similarly passed by the Family Court, Amravati in Petition No.E/58/2014, wherein the Family Court, Amravati has rejected the application for maintenance filed under Section 125 of the Code of Criminal Procedure, for want of jurisdiction to Amravati Court.

8. On facts it is argued that though wife was permanently staying with her parents at village Warud, she has chosen to file this proceeding under D.V. Act at Amravati, which has no nexus. It is submitted that the wife at any point of time never lived at Amravati, however, by giving c/o., address she has filed the application in Amravati Court, which has no jurisdiction.

9. Per contra, the learned counsel for non-applicant – wife would submit that undisputedly Wardha, as well as Warud Court does have jurisdiction, however, as the wife was temporarily staying at Amravati with her relative, hence, the Court at Amravati has every jurisdiction to try and entertain the dispute filed under D.V. Act.

10. True, record indicates that wife's application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights was filed at Amravati Family Court, which was rejected for want of jurisdiction. Similar is the case of wife's application under Section 125 of the Code. It is required to be noted that Section 19 of the Hindu Marriage Act specifies the Court to which the petition under Hindu Marriage Act is to be presented. For ready reference, Section 19 of the Hindu Marriage Act is reproduced below :

“Section 19 - Court to which petition shall be presented. - Every petition under this Act shall be presented to the district Court within the local limits of whose ordinary original civil jurisdiction–

- (i) the marriage was solemnized, or*
- (ii) the respondent, at the time of the*

7

*presentation of the petition, resides,
or*

*(iii) the parties to the marriage last resided
together, or*

*[(iii-a) in case the wife is the petitioner,
where she is residing on the date of
presentation of the petition, or]*

*(iv) the petitioner is residing at the time of
the presentation of the petition, in a
case where the respondent is, at that
time, residing outside the territories to
which this Act extends, or has not
been heard of as being alive for a
period of seven years or more by those
persons who would naturally have
heard of him if he were alive.”*

11. Sub-section [iii-a], which is relevant for our purpose speaks about conferring jurisdiction to a Court where the petitioner [wife] was residing on the date of presentation of the petition. Likewise, under sub-section [b] to Section 126 of the Code, the application under Section 125 of the Code can be filed at a place where the wife resides. Thus, one of the requirement for presenting

8

the petition under the Hindu Marriage Act, and application under Section 125 of the Code is the place where the wife resides at the time of presentation of her claim. In view of said specific jurisdictional clause, those petitions were rejected as Amravati Court was not the place of residence of wife at the time of presentation.

12. Notably, the present application is under Section 12 of the D.V. Act. The jurisdiction of the Court is specified in terms of Section 27 of the Act. Sub-clause [a] to Section 27 (1), provides that the place where a person aggrieved “permanently” or “temporarily” resides, does have the jurisdiction to entertain the application. This provision is specific having a distinct feature that not only a place of permanent residence, but, a temporary residence, is also the place, which has been included as a place where the application can be filed. We do not find such parallel provision in the Hindu Marriage Act or Section 126 of the Code to confer jurisdiction to the Court where wife temporarily resides. Therefore, distinction lies in the special statute which confers jurisdiction to a Court even if the wife temporarily resides within the local jurisdiction of said Court. In that context, the matter requires consideration.

13. The non-applicant / wife in her application under Section 12 of the DV Act has detailed her address as c/o. one Shyamkant K.Raut, Ushanagar, Sai Nagar, Amravati, which is the place of her relative. Though the wife has not stated in so many words as to why and exactly for how much duration she was living at Amravati, however, the fact remains that at the relevant time of filing application, she gave her residential address of Amravati. Pertinent to note that the husband while filing First Appeal before this Court has stated her address of Amravati, and particularly he admits that notice of said proceeding was served on wife on Amravati address. Though the learned Counsel for the husband would submit that since in the trial Court the wife has shown her residence at Amravati, that is why in Hindu Marriage proceeding the same address was carried. However, it is evident that admittedly notice of First Appeal was also served on non-applicant – wife at Amravati address, meaning thereby, wife was staying at Amravati at the relevant time.

14. The learned counsel for the husband would submit that mere staying would not extend the jurisdiction to said Court and for

this purpose has relied on the decision of this Court in case of **Advocate Ramesh Mohanlal Bhutada and another .vrs. State of Maharashtra and others – 2011 Cri.L.J. 4074**. In said case this Court has observed that the term ‘resides’ implies something more than a casual stay, but, not merely a casual flying visit. The statute has specifically provided the jurisdiction to the permanent place of residence, as well as temporary place, meaning thereby if the wife resides temporarily at some place, it has jurisdiction. Since the notice of the proceeding was served on wife at Amravati itself, it cannot be said that it was merely a coincidence.

15. Having regard to the aims and object of the Act, liberal construction has to be given to the provision of Section 27 to save the destitute lady, rather throwing away on mere technicalities. In view of above, the findings recorded by the Courts below that Amravati Court has jurisdiction, as regards to the proceedings under the Domestic Violence Act, cannot be said to be illegal.

16. Coming to the facts, the wife in her evidence has stated as to how she has been humiliated and beaten during her residence at

11

the matrimonial house. She has specifically alleged that the husband was avoiding her for sexual intercourse and thus, has deprived her from sexual flavours. The term 'domestic violence' has a wide meaning in terms of Section 3 of the Act. It includes all acts or omissions or the conduct of respondent which causes physical, sexual, verbal, emotional or economic abuses. Deprivation of the newly wedded wife from her physical needs certainly amounts to emotional and mental abuse, within the meaning of Section 3 of the Act. Both the Courts below have considered the evidence on the aspect of domestic violence in proper perspective which calls for no interference.

17. As regards to the quantum of maintenance is concerned, apparently there is no specific evidence about income of the husband, but, it is purely a guess work. It has come in the evidence that husband was running a chemist shop and having landed property. In response, the husband has brought on record the evidence to show that at village Ashti there are 8 other shops, meaning thereby he does not get good income from said shop situated in the village. It is the evidence of husband that only 3

12

Acres of dry land stands in his name, from which he do not get any income. Wife has not disputed that husband owns only 3 Acres of land. The documents tendered by the husband are sufficient to convey that there are various shops in the small town. Due to business competition, particularly having regard to the small place, it cannot be said that the husband has a good income from the said shop. Always the amount of maintenance shall be befitting to the income and living standard of the parties. Considering the limited source of income of husband, the amount of maintenance and rent requires slight modification.

18. Having regard to the above facts, to strike right balance, the amount of maintenance shall be @ Rs.4000/- per month and amount of rent shall be Rs.2500/- per months. With this modification, Criminal Application is partly allowed and disposed of.

JUDGE