

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 25 OF 2018

1. Shabana W/o Dr. Mohammad Nomani,
Age : 36 Years, Occ. Household,
R/o. C/o. Karanj Mohalla, Sai Road,
Pathri Tq. Pathri, Dist. Parbhani.
2. Aatib Rohan S/o Mohammad Nomani,
Age : 8 Years, Occ. Nil,
Minor U/g of real mother i.e. appellant
No.1, Both R/o as above

.. Applicants
(Ori. Appellants)

VERSUS

1. Dr. Mohammad S/o Mufti Taher Nomani,
Age : 36 Years, Occ. Medical Officer,
R/o. Bashir Ganj, Beed, Tq. & Dist. Beed
Now at present Government Medical
College Latur, Department of Forensic
Science Medicine & Texcology.
2. Mufti Taher S/o Waliyoddin Nomani,
Age : 65 Years, Occ. Haj Turist
R/o. Bashir Ganj, Beed.
3. Khudsiya Begum W/o Mufti Taher Nomani,
Age : 60 Years, Occ. Household,
R/o. Bashir Ganj, Beed.
4. Dr. Najmoddin S/o Mufti Taher Nomani,
Age : 41 Years, Occ. Medical Officer,
R/o. Bashir Ganj, Beed.
At present Rural Hospital, Raimoh
Tq. Patoda, Dist. Beed.
5. Ahemad S/o Mufti Taher Nomani,
Age : 38 Years, Occ. Contractor
R/o. Bashir Ganj, Beed.

6. Farah @ Ayesha Begum W/o Najmoddin Nomani, Age : 32 Years, Occ. Teacher, R/o. Bashir Ganj, Beed.
7. Humera Begum W/o Ahemad Nomani, Age : 37 Years, Occ. Household, R/o. Bashir Ganj, Beed.
8. Kazi Abdul Majid S/o Kazi Abdul Kadar Age : 45 Years, Occ. Teacher, R/o. Bale Pir Beed.
9. Shabana Begum S/o Abdul Majid Kazi Age : 42 Years, Occ. Teacher, R/o. Bale Pir Beed
10. Kazi Abdul Wajed S/o Kazi Abdul Kadar Age : 50 Years, Occ. Plotting R/o. Bundelpura Near Old Police Chowki, Beed.
11. Munnawar Sultana W/o Abdul Wajed Kazi Age : 45 Years, Occ. Head Master, R/o. Bundelpura Ner Old Police Chwoki, At present Z.P. Central Primary Prashala, Nipani Jawalka Tq. Gevrai Dist. Beed.
12. Sayyad Rehmatulla S/o Sayyad Husen Age : 70 Years, Occ. Retired/Typing Shop, R/o. Pangri Road, Beed.
13. Shamshad Begum S/o Ajij Bagwan, Age : 40 Years, Occ. Beauty Parlour, R/o. Barshi Naka, Behind Hina Petrol Pump, Beed.

.. Respondents
(Ori. Respondents)

WITH
CRIMINAL REVISION APPLICATION NO. 18 OF 2018

Dr. Mohammad Nomani S/o Mufti Taher,
Age : 40 Years, Occ. Education,
R/o. Bashir Ganji, Beed.

..Applicant
(Original Accused)

VERSUS

Shabana Begum W/o Mohammad Nomani,
Age : 36 Years, Occ. Household,
R/o. C/o Abdul Hamid Pahelwan, Karanja Mohalla,
Sai Road, Pathri, Tq. Pathri,
District Parbhani.

.. Respondent
(Ori. Complainant)

...

Mr. Tabrezuddin Quadi Advocate holding for Mr. Shaikh Mujitaba Gulam
Mujtaba in Criminal Revision Application No. 25/2018;
Mr. C. V. Dharurkar, Advocate for Respondent in Criminal Revision
Application No.18 of 2018 and Respondents Nos. 1 to 13 in Criminal
Revision No.25 of 2018

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CORAM : S. G. MEHARE, J.

Reserved on : 17.07.2023

Pronounced on : 03.10.2023

JUDGMENT :

1. Both the husband and wife have impugned the Judgment and Order passed by the learned Judicial Magistrate, First Class, Pathari passed in Misc.Criminal Application No. 35 of 2012 and the common Judgment and Order dismissing the appeal of both sides passed by the learned Additional Sessions Judge, Parbhani, in Criminal Appeal No.51 of 2013 preferred by the husband and Criminal Appeal No. 35 of 2016.
2. The parties have to point out there were errors on the face of the record, including the illegality and injustice committed by the Courts deciding the rights of the parties. This Court will examine the legality,

propriety and correctness of the impugned Judgments and Orders under limited jurisdiction under Section 397 r/w 401 of the Code of Criminal Procedure.

3. Heard the respective counsels.

4. The facts in brief giving rise to the applications are Muslim by religion. They had performed marriage on 30.11.2008. They have been blessed with a male child. However, they could not pull on their marital life happily. The wife had alleged against the husband and his family that they had caused domestic violence; hence, she was to stay with her parents. She had filed an application under Section 125 of the Code of Criminal Procedure. The Court granted the maintenance to her and her son. The husband is paying maintenance regularly. A report under Section 498-A of the Indian Penal Code was also lodged against the husband and his relatives. However, they have been acquitted after passing the impugned order by the learned Judicial Magistrate First Class. The husband has also filed a suit for restitution of conjugal rights. The said suit was dismissed. The husband withdrew the appeal filed against the said Judgment and Decree.

5. The wife and her son claimed the protection orders under Section 18, residence order under Section 19 and monitory reliefs

under Section 20 of The Protection of Women From Domestic Violence Act 2005 (for short, 'DV Act'). Appreciating the evidence, the learned Magistrate declined to grant her protection under Section 18 of the D.V. Act. However, granted her rent instead of residence in the common shared house of her husband and also granted monetary assistance and compensation under Sections 20 and 22 of the Domestic Violence Act.

6. The Judgment and Order of the learned Judicial Magistrate was impugned before the learned Sessions Court. The learned Additional Sessions Judge re-appreciated the evidence and concluded that there was no substance in the appeals and dismissed both appeals.

7. The learned counsel for the wife has vehemently argued that the restitution sought by the husband was dismissed. Considering the status of the parties, the rent of Rs. 2800/- per month is too low. The wife and her son were entitled to receive the lumpsum compensation of Rs. 31,40,000/- for the education, medications and marriage of her son. He would argue that both Courts believed that domestic violence was caused to her. Therefore, the case of the husband that domestic violence was not proved; hence, the wife and son are not entitled to relief is unfounded. He prayed to allow his revision and prayed that

the lumpsum compensation of Rs. 31,40,000/- be ordered, and considering the standard of living, house rent shall also be enhanced.

8. Per contra, the learned counsel for the husband has vehemently argued the Court granted the relief, which was not prayed for. The wife had filed an application under Section 127 of the Code of Criminal Procedure for enhancement of the maintenance, but she withdrew it. The allegations levelled against the applicant were pervasive. The applicant/ husband was acquitted of the offence punishable under Section 498-A of the Indian Penal Code. The appeal preferred against the acquittal has also been dismissed. The Court has recorded the contradictory findings about the entitlements of relief under the Domestic Violence Act. The pleadings in the application were vague. The allegations as regards driving her out of the house and causing domestic violence were not pleaded in the application. In the absence of domestic violence, the Court exceeded its jurisdiction in passing the impugned orders. He has also filed his written notes of the arguments and relied on the cases:-

- (i) B.Prakash Vs. Deepa and another, CRL.RC.(MD) No.453 of 2014 Madhurai Bench of Madras High Court.
- (ii) Jayesh Uttamrao Khairnar Vs. State of Maharashtra and others, Criminal Writ Petition No. 259 of 2009

- (iii) Kishor Srirampant Kale Vs. Shalini Kishor Kale & Others, 2010
Cri. L.J. 4049
- (iv) Satish Chander Ahuja Vs. Sneha Ahuja, AIR Online 2020 SC 784
- (v) Vjay Verma Vs. State N.C.T. of Delhi And Another Cri.M.C.
3878/2009
- (vi) Rajnesh Vs. Neha and another AIR 2021 SC 913 Criminal Appeal
No. 730 of 2020 (Arising out of SLP (Cri) No. 9503/2018 Dated
04-11-2020

9. In view of the fact that the husband was residing at his place of service, keeping the wife in his hometown, the appellate Court has recorded the findings that it is emotional domestic violence. It is true that the learned trial Court observed that the wife did not plead that she was residing with the family of her husband, and it was a family of 13 members. The Court has observed that due to the conduct of the husband and domestic violence, she was forced to stay at her parent's home. None of the Court believed the defence raised by the husband.

10. It is true that to invoke the reliefs under the D.V. Act, the primary burden is on the person aggrieved to establish that there was domestic violence. The term domestic violence has been defined under section 3 of The Protection of Women From Domestic Violence Act, 2005, which includes harms or injuries that may be mental or physical. The

allegations of cruelty were levelled against the husband, and the case was registered under Section 498-A of the Indian Penal Code. That prima facie material available with the Court shows that she was harassed and treated cruelly. Physical, sexual, verbal, emotional, and economic abuse is also domestic violence as defined under Section 3 of the D.V. Act. Physical abuse includes any act or conduct that is of such a nature as to cause bodily pain, harm, or danger to life. The "verbal and emotional abuse" includes insults, ridicule, humiliation, name-calling, insults or ridicule specifically about not having a child or a male child, and repeated threats to cause physical pain to any person in whom the aggrieved person is interested. Economic abuse includes deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom. Any act, omission, commission or conduct of the respondent shall amount to domestic violence in certain circumstances. Appreciating the evidence, both courts appear to have correctly believed that the evidence led before it was sufficient to establish the domestic violence.

11. The Domestic Violence Act is enacted in addition to the provision of any other law in existence. The object of this Act is to provide more effective protections of the rights of the women guaranteed under the constitution who are victims of violence of any kind occurring within

the family and matters connected therewith or incidental concerned with. The woman has a right to get the respect and human treatment as a married wife of someone. If the conduct of the family or husband himself is such that it causes mental torture, it is also domestic violence. Unless the material is brought in rebuttal, it is presumed that the wife would not make the allegations against the husband because there may be danger to her matrimonial tie.

12. Section 28 of the Domestic Violence Act empowers the Court to lay down its procedure for disposal of an application under Section 12, Section 2 or Section 23 of the D.V. Act. The term domestic violence should be construed liberally. The circumstance may help to understand the domestic violence caused to the aggrieved person. The material on record was sufficient to believe that domestic violence was caused against the wife; hence, the objection raised by the husband that the plea was vague is unacceptable.

13. The case laws relied on by the learned counsel for the applicant have been examined. The Court is of the opinion that those are not helpful to the husband to discard the claim of the wife.

14. So far as the quantum granted to the victim and her son is concerned, considering the purchase of the town where the victim was

residing, the courts have correctly quantified the rent. The standard of living was also correctly appreciated, and the compensation awarded to the wife has been correctly quantified. Examining the records, Judgments, and orders, the Court found that those are free from errors, illegality and impropriety. Hence, the following order:-

ORDER

1. Both Criminal Revision Applications stand dismissed.
2. R and P be returned to the Court of the learned Judicial Magistrate, Pathari.
3. Rule stands discharged.

(S. G. MEHARE)
JUDGE

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