

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

CRIMINAL WRIT PETITION NO. 323 OF 2019

Shaikh Ujma Firoz
and another

.. Petitioners

Versus

Firoz Ahmed Shaikh and others

.. Respondents

Mr. Shaikh Mazhar A. Jahagirdar, Advocate for the Petitioners.
Mr. Mobin H. Shaikh, Advocate for Respondent Nos. 1 to 7.

CORAM : KISHORE C. SANT, J.

DATED : 12th JANUARY, 2023.

P. C. :-

. Heard learned advocates for both the parties. Taken up for final disposal by consent of the parties.

2. The wife has come to this Court challenging the judgment and order passed by the learned Additional Sessions Judge, Shrirampur in Criminal Appeal No. 07/2015 dated 04.01.2018 wherein, her appeal came to be dismissed. The appeal was filed challenging the dismissal of her application filed under the Protection of Women from Domestic Violence Act (for short "Domestic Violence Act"). The petitioners had filed proceeding bearing Criminal Application No. 228/2011 alleging the acts of domestic violence at the hands of respondents and prayed for

maintenance to herself and her daughter who was aged three years then. The learned Trial Judge held that the parties are not in relationship since there is Talak on 11.01.2011 and the proceeding was filed on 16.07.2011. It was necessary to establish that the parties are in relation and are sharing common house. The learned Trial Court has further held that in absence of any act of domestic violence the proceeding cannot be entertained merely for payment of maintenance and the wife could have sought relief of maintenance under other laws.

3. The said judgment was assailed by filing Criminal Appeal No. 07/2015. The learned Additional Sessions Judge concurred with the findings of the learned Trial Judge and in paragraph No. 12, the Court has held that deprivation of Stridhan articles during the domestic relationship in a shared household amounts to domestic violence. Further, it is held that, however, in this case that also is not proved by the wife.

4. Learned advocate for the petitioners submits that both the Courts below have recorded perverse finding that the wife cannot claim maintenance under the provisions of Domestic Violence Act without alleging the act of domestic violence. He submits that wife has always disputed the fact of Talak. He relies upon the judgment of this Court in a case of Parvin Firoz Shaikh & ors. Vs. Firoz Sharfuddin Shaikh & ors.

reported in 2013 (5) LJSOFT 71 and submits that the reliefs can be granted even after divorce to the wife and she is entitled to the reliefs. The Court has held that Section 20 of the Domestic Violence Act contemplates monetary relief to the aggrieved person as a result of domestic violence. Thus, he submits that this is a fit case at least to grant maintenance to the wife and both the Courts below have failed to consider the said aspect.

5. Learned advocate for respondents supported the judgments of the learned Trial Court. He vehemently argued that if the wife could not prove the domestic relationship and domestic violence, certainly she is not entitled to any of the reliefs. He submits that after the divorce on 11.01.2011 there was no relationship between the parties. He submits that, the act of domestic violence is for filing the proceeding under the Domestic Violence Act. With his reply he produced on record the copy of the judgment and order passed by the learned Additional Sessions Judge, Shrirampur wherein, the respondents were prosecuted by the petitioners making allegation that the respondent No. 2 that is her brother in law committed rape on her. Thus, he submits that it is the case that, in fact, the petitioners have harassed the entire family. He further submitted that the petitioner-wife has suppressed the material fact that she had filed an application seeking maintenance under Section 125 of the Code of Criminal Procedure in the Court of learned J.M.F.C., Shrirampur

bearing Criminal Misc. Application No. 357/2017. The learned J.M.F.C. in that case has already granted maintenance to the petitioners at the rate of Rs. 3,000/- (Rs. Three Thousand only) per month from the date of filing of the application. The said application was filed on 28.07.2017. Thus, he prays that this petition also suffers from suppression of material fact and on this count also the present petition deserves to be dismissed.

6. Learned advocate for the respondents further relies upon the judgment of this Court delivered at Nagpur Bench in Criminal Revision Application (REVN) No. 121/2018 dated 18.04.2019. It is held in the said judgment by considering various judgments that there was a domestic relationship between the parties before entertaining the petition under the Domestic Violence Act. In that case, it is held that, the wife ceased to have relationship from the date of decree of divorce. He further relies upon an order passed by the Hon'ble Apex Court in Special Leave Petition (Criminal) Diary No. 34053/2019 wherein, the Hon'ble Apex Court had upheld the judgment of the High Court. The High Court had held that the ingredients of the Domestic violence were absent in the case and has refused relief to the wife.

7. In rebuttal, learned advocate for the petitioners submits that in the case decided by this Court at Nagpur Bench, there was severance of marriage by the decree of divorce, however, in this case, the fact of divorce is disputed by the wife.

8. Considering the submissions, this Court finds that it was necessary for the petitioner-wife to establish the act of domestic violence and that there was a relationship in existence between the parties. Both the Courts below have recorded the finding of the fact that, the wife has failed to prove domestic relationship and also has failed to prove the act of domestic violence. This Court finds that, no interference is required while exercising the jurisdiction under Article 227 of the Constitution of India.

9. The writ petition is thus dismissed.

(KISHORE C. SANT, J.)

PS.B.