

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 114 OF 2022

Mandabai w/o. Nivrutti Magar,
Age 48 years, Occu. Nil,
R/o. Near Muktaai High School,
behind NMC Colony, Vaijapur,
Taluka Vaijapur, District Aurangabad .. Applicant

Versus

1. Nivrutti s/o. Namdev Magar,
Age 63 years, Occu. Retired,
2. Bhimabai Nivrutti Magar,
Age 53 years, Occu. Household,

Both R/o. Jivan Ganga Society,
Vaijapur, Taluka Vaijapur,
District Aurangabad
3. The State of Maharashtra .. Respondents

Mr. V. H. Pathade, Advocate for Applicant;
Mr. S. G. Bobade, Advocate for Respondents No.1 and 2;
Mr. S. b. Narwade, A.P.P. for Respondent No.3/State

CORAM : S. G. MEHARE, J.

Reserved on : 03.04.2023
Pronounced on : 25.04.2023

JUDGMENT

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.
2. The petitioner/wife has preferred this revision against the judgment and order of the learned Additional Sessions Judge,

Court No.2, Vaijapur, District Aurangabad, in PWDVA Appeal No.10 of 2019, dated 28.01.2022.

3. It was not in dispute that the petitioner is not a divorcee. Her first husband with children abandoned them. She has a case she resided with her children with the respondent for fifteen years, and they were in a domestic relationship. The respondent caused her domestic violence. Hence she had filed a petition for maintenance under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short, "D.V.Act").

4. Appreciating the evidence and relying upon the case of **Jayshri Samshuddin Talapdar Vs. Samshuddin Karim Talapdar and another, 2018 All MR (Cri) 2305**, the learned Judicial Magistrate, had allowed the petition and granted the maintenance to the petitioner. However, the learned Additional Sessions Judge, Vaijapur, heavily relying on the case of **D.Velusamy Vs. D.Patchaiaammal, (2010) 10 SCC 469**, held that the petitioner was not in a domestic relationship with the respondent in the nature of marriage; hence, not entitled to the relief under the D.V.Act.

5. The sole question to determine is, whether the parameters laid down in the case of **D.Velusamy** (*supra*) would attract and the ratio laid down by the Bombay High Court in the case of **Jayashri** (*supra*) is inapplicable and distinguishable on facts.

6. The learned Additional Sessions Judge, Vaijapur, did not disturb the evidence produced by the parties. The petitioner had proved that for the last 15 years, she, along with her children, was residing with the respondent portraying themselves as husband and wife.

7. The facts of the case of **Jayshri** (*supra*) and the case in hand were mostly identical. However, the learned Additional Sessions Judge distinguished the ratio of the case of **Jayshri** (*supra*), observing that in the case at hand, the first husband of the applicant is alive, and the husband, in the case of Jayshri, was disappeared. Only on such trifle change, in fact, the learned additional sessions Judge set aside the judgment of the learned Magistrate.

8. The Bombay High Court, in the case of **Jayshri** (*supra*) discussed the ratio laid down in the case of **D.Velusamy** (*supra*) and observed that the victim was entitled to relief under the D.V.Act.

9. Appreciating the evidence and the facts of the case, which are identical to the case of **Jayshri** (*supra*). The Court has no reason to differ from the view taken in **Jayshri's** (*supra*) case. It is squarely applicable to the case at hand. However, the Additional Sessions Judge, Vaijapur, erroneously held that the ratio of **Jayshri** (*supra*) is not applicable to the case at hand.

10. Examining the impugned judgments and the orders, the Court is of the view that the applicant had proved that there was domestic relationship between the applicant and the respondent No.1 and she was an aggrieved person. Therefore, the impugned judgment and order warrants interference. In the result, the petitioner succeeds. Hence, the following order:-

ORDER

- i) Criminal revision application is allowed.
- ii) The impugned judgment and order of the learned Additional Sessions Judge, Court No.2, Vaijapur, District Aurangabad, in PWDVA Appeal No.10 of 2019, dated 28.01.2022 stands quashed and set aside.
- iii) The order of learned Judicial Magistrate First Class, Court No.3, Vaijapur, District Aurangabad, in Criminal Miscellaneous Application No.278 of 2014, dated 22.04.2019, stands restored.
- iv) R & P be returned to the learned Judicial Magistrate First Class, Court No.3, Vaijapur, District Aurangabad.
- v) Rule made absolute in above terms.

**(S. G. MEHARE)
JUDGE**

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