

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

CRIMINAL WRIT PETITION NO. 490 OF 2023

Amruta Deepak Gohil,
Age : 36 years, Occ: Student,
R/o Flat No. 10, Anant-Avdhoot
Apartment, Chatrapati Nagar,
Garkheda, Aurangabad – 431001

...Petitioner

Versus

1. Deepak Bhagwat Gohil,
Age : 45 years, Occ: Business,
2. Bhagwat Gohil,
Age: 79 years, Occ: Pensioner,
3. Suman Bhagwat Gohil,
Age: 73 years, Occ: Household,

All R/o. Flat No. 10,
Rashmi Co-operative Housing
Society, Wadgaon Sheri,
Pune – 411 014.

...Respondents

Mr. C. C. Deshpande h/f Mr. S. S. Ghodke, Advocate for
the Petitioner.

Mr. A. S. Savale, Advocate for Respondents.

CORAM : R.M. JOSHI, J.

**RESERVED ON : JUNE 05, 2023
PRONOUNCED ON : JUNE 12, 2023**

JUDGMENT

1. Petitioner being aggrieved by the judgment and
order dated 13th March, 2023 passed in PWDVA Appeal No.
03/2023 by Learned Sessions Court, Aurangabad setting
aside order dated 08th December, 2022 passed in PWDVA

Application No. 243/2019 by learned JMFC, Aurangabad, has preferred this Petition.

2. The facts in nutshell which has led to filing of the Petition can be recorded as under:

Marriage between the Petitioner and the Respondent No. 1 was solemnized as per Hindu rites and customs on 02.07.2017 at Lonavala, Pune. It was second marriage of both. Petitioner has son and Respondent No. 1 husband has one daughter out of their first marriage. Both children are aged about 10 years. It is the case of the Petitioner wife that the Respondent No. 1 husband behaved indecently with her and caused sexual harassment. It is also stated that he had made allegations against the son of Petitioner for misbehaving with his daughter. Petitioner claims that on account of said ill-treatment she left her matrimonial home on 31.12.2017 and since then she is residing with her mother. With these averments application was filed before learned JMFC under the provisions of Protection of Women from Domestic Violence Act, 2005 (for short '**the Act**') and interim maintenance was prayed therein.

3. The said application was opposed by the Respondent No. 1 husband. There is, however, no dispute made about the fact that the Petitioner and the Respondent No. 1 are married on 02.07.2017 and they have one child each from the first marriage. He however denied allegations made by the Petitioner wife against him. It is alleged by the Respondent No. 1 that the son of the Petitioner has misbehaved with his daughter. A complaint is made to Cyber Cell by him against the Petitioner wife for recording a video of his daughter asking indecent question to her and circulating the said video. It is the contention of the Respondent No. 1 that though he was prepared to reconcile the dispute, the Petitioner has refused to cohabit with him and has put-forth unreasonable/unacceptable conditions for cohabitation. He further denied of causing any harassment to the Petitioner and further denied claim of maintenance.

4. After hearing the parties, learned JMFC passed order below Exh. 3-A on 08.12.2022 with observation that there are meager allegations about domestic violence of the Applicant by Respondent No. 1 and real

dispute is about their children. Learned JMFC however finally held that maintenance is required to be provided to the Petitioner and having regard to the intention of statute, interim maintenance of Rs. 5,000/- was granted. In the Appeal, learned Additional Sessions Judge has reversed the said order with observation that the circumstances of recording of video by the Petitioner and alleged indecent incident as well as different version of the Petitioner in the complaint creates doubt about the existence of domestic violence. It is also observed that omnibus allegations are made against the husband which do not constitute domestic violence and also considering the delay, the Petitioner is not entitled for interim maintenance.

5. Learned Counsel for the Petitioner states that the Appellate Court has committed serious error in reversing the order passed by learned Magistrate of directing interim maintenance. According to him, there is total disregard to the provisions of the Act which is enacted to provide effective protection of the rights of women against domestic violence. He submitted that there is an error committed by the Appellate Court

in holding that on account of delay and for the alleged inconsistencies in the statement, no domestic violence can be said to have been committed against Petitioner.

6. Learned Counsel for the Respondents, on the other hand, supported the judgment and order of Appellate Court. He submitted that the Petitioner has suppressed the material facts in beginning such as non-disclosure of her educational qualifications and her employment. The attention of the Court is drawn to the affidavit filed by the Petitioner wherein the disclosure about the education qualification is absent and that there is a statement about she receiving Rs. 25,000/- per month by way of rent. By referring to the judgment in the case of Kishor Samrite Vs. State of U.P. and others, 2013(2) SCC 398, it is submitted that the person who approached the Court with unclean hands is not entitled for any relief. It is further submitted that Petitioner is well educated person and that she had experience of working as a teacher and therefore, it does not stands to any reason that she is not employed. It is submitted that even no attempt to get an employment is sufficient reason to deny her

maintenance. To support said submissions reliance is placed in the cases of Mamta Jaiswal Vs. Rajesh Jaiswal, (2000) 2 DMC 170, Sanjay Bharadwaj and Others Vs. The State and Another, (2010) 7 AD (Delhi) 615. It is further canvassed that unless the domestic violence is established, Petitioner is not entitled to get any maintenance. To support this submission a reference is made to the judgments of this Court in the cases of Narayan Babi Salgaonkar Vs. Jayshree alias Mansi Narayan Salgaonkar, 2017 SCC OnLine Bom 723, Kaviraj Dattatray Muslonkar Vs. Rechana Kaviraj Muslonkar and Anr, AIR BOMR (Cri)-2017-2-432.

7. In order to appreciate the rival contentions, it would be necessary to consider the relevant provisions of the Act and also aims and objects of the said enactment. The object and reasons for the said enactment is to provide effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters incidental and connected thereto. The intention of legislature, therefore, is to provide for protection of women who are victims of

violence within family and also for matters connected/incidental thereto. The Courts, therefore, cannot restrict the interpretation of the same by giving restricted meaning thereto.

8. Section 3 defines Domestic Violence. For the purpose of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it harm endangers mental or physical health of the aggrieved person or tends to do so and includes causing of physical abuse, sexual abuse, verbal and emotional abuse and also economic abuse. Explanation I(iv) defines economic abuse which includes deprivation of all or any economic abuse or financial resources to which the aggrieved person is entitled under any law. The definition of domestic violence, therefore, is not restricted to the physical or sexual abuse but also emotional and economic abuse to women amounts to domestic violence. Moreover, actual emotional or physical harm is not contemplated but even act tends to do so is squarely covered by this definition. Apart from the fact that the definition of domestic violence is inclusive and clear, appropriate

interpretation thereof must given keeping in mind aims and objects of the statute. Keeping in mind relevant provisions of the Act, application filed therein needs to be considered.

9. There is no dispute about the fact that the Petitioner and Respondent No. 1 are Hindus and their marriage was performed as per Hindu rites. Under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 (for short '**Maintenance Act**') it is obligation of the husband to maintain his wife during her lifetime. Sub-section 2 provides that wife is entitled to receive maintenance even in the event she lives separately and clause (g) provides that she can live separately justifying reasonable cause. It is only in the eventuality mentioned in Section 18(3) wife is not entitled to claim maintenance. Sub-section 3 has no application to the present case. In the instant case, it is clear from the contention of both sides that the Petitioner has not left matrimonial home on her own accord but there were peculiar circumstances which compelled her to go to her mother's place. It is specifically averred in the application as to the

treatment received by her at the hands of her husband. Petitioner has also not suppressed the fact about alleged occurrence of incident involving both children. Thus, this is not the case where wife has left matrimonial home for no rhymes and reasons. There is no allegation against Petitioner that for some other reasons she is staying with her mother.

10. Thus, present case is squarely covered by Section 18 of the Maintenance Act and that there is legal obligation on the Respondent husband to maintain wife. In the light of these facts, it is relevant to take note as to what amounts to economic abuse. Section 3(I)(iv) of Act provides that deprivation of any economic or financial resources to which women is entitled under any law or customs, whether payable under order of Court or otherwise or which is required out of necessity amount to economic abuse. Apart from emotional and physical abuse, Petitioner herein has clearly made out case of economic abuse at the hands of her husband. Thus, there cannot be any reason or justification to deny relief of maintenance to her.

11. Appellate Court has held that it is not the case of domestic violence, however, it is the case of disputes with regard to the children. Apparently, while making such observation the Court has fell in error in ignoring definition of Domestic Violence, which not only refers to the actual act of emotional or physical injury but any act which tends to do so, is also covered. Even assuming that there was dispute between husband and wife over the issue of alleged conduct of son of Petitioner with daughter of Respondent, but eventually said dispute has led to compel Petitioner to leave matrimonial home. On one hand, Appellate Court has taken cognizance of the fact that the Petitioner has belatedly approached the Court for the relief, however, at the same time it is conveniently ignored that even Respondent husband has lodged complaint against wife after a period of one year. It does not stand to any reason as to why a father would wait for such long period to take action in regard to such serious matter concerning to his daughter.

12. Further more, there is nothing on record to indicate that after the Petitioner left the matrimonial

home in the circumstances as stated above any attempt was made by the Respondent to resume cohabitation. It is only after the Petitioner approached to the women protection cell the Respondent appears to have shown his willingness to cohabit with the Petitioner. There is no doubt that the conduct of Respondent has led to causing of economic abuse of Petitioner.

13. Learned Magistrate as well as the Appellate Court has held that it is meager domestic violence. Provisions of the Act however do not differentiate or determines degrees of domestic violence. A domestic violence does not depend on its severity for the purpose of proceeding under the Act. Any women who proves that she has suffered domestic violence at the hands of Respondent, the degree of the said violence becomes immaterial. Both Courts, therefore, have committed error in holding that it is a meager domestic violence committed against Petitioner.

14. As far the order of maintenance is concerned, it is the responsibility of the husband to maintain his wife unless she is able to maintain herself. It is not case of Respondent that Petitioner is employed and can

maintain herself. Even if it is accepted that the Petitioner is qualified women, still there is no reason to hold at this stage that she did not try to secure employment. It is always open for the Petitioner to explain during trial the circumstances in which she remained unemployed. To accept the submissions of Counsel for the Respondents made relying the judgment of this Court as well as judgment of Delhi High Court would amount to turning blind eye to the ground realities of the life. It is time when highly qualified persons find it difficult to secure an employment owing to the issue of unemployment. If such view is adopted then in no case any women would ever be entitled to seek any maintenance and needless to say that this would frustrate the very purpose of enactment of the Act.

15. The Petitioner has fairly disclosed that she is receiving Rs. 25,000/- by way of rent and in view of the said fact the direction of learned Magistrate of payment of maintenance of Rs. 5,000/- per month is justified. Even otherwise, Petitioner has not challenged the said quantum of interim maintenance.

16. As a result of above discussion, the impugned judgment and order passed by the learned Additional Sessions Judge, Aurangabad dated 13.03.2023 in PWDVA Appeal No. 3/2023 is hereby quashed and set aside. The order dated 08th December, 2022 passed in PWDVA Application No. 243/2019 by learned JMFC, Aurangabad is hereby confirmed.

17. Petition stands allowed in above terms.

(R.M. JOSHI, J.)

LATER ON:-

1. After pronouncement of judgment, learned Counsel for the Respondents seeks stay of the order for five weeks.

2. Having regard to the nature of order and circumstances in which learned JMFC has directed payment of amount of Rs. 5,000/- (Rupees five thousand) per month as maintenance, this Court does not find it appropriate to stay the order passed. Hence, request stands rejected.

(R.M. JOSHI, J.)

Malani