

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

CRIMINAL WRIT PETITION NO. 926 OF 2019

- | | | |
|----|-------------------------|-----------------|
| 1. | Kavita w/o Arun Kumawat | |
| 2. | Soham s/o Arun Kumawat | ... PETITIONERS |

VERSUS

- | | | |
|----|------------------------------|-----------------|
| 1. | Arun s/o Bhagwat Kumawat | |
| 2. | Dilip s/o Bhagwat Kumawat | |
| 3. | Vimal w/o Ashok Kumawat | |
| 4. | Manisha s/o Ghansham Kumawat | ... RESPONDENTS |

Mr. M. A. J. Shaikh, Advocate for petitioners

Mr. S. B. Kadu, Advocate for the respondent Nos. 1 to 4.

WITH

CRIMINAL WRIT PETITION NO.1100 OF 2019

- | | | |
|----|---------------------------|--|
| 1. | Arun s/o Bhagwat Kumawat | |
| 2. | Dilip s/o Bhagwat Kumawat | ... PETITIONERS
(Orig. respondents) |

VERSUS

- | | | |
|----|------------------------------|---|
| 1. | Kavita w/o Arun Kumawat | |
| 2. | Soham s/o Arun Kumawat | |
| 3. | Vimal w/o Ashok Kumawat | |
| 4. | Manisha s/o Ghansham Kumawat | ... RESPONDENTS
(Res. No. 1 and 2 is the Orig.
applicant No. 1 and 2) |

Mr. S. B. Kadu, Advocate for the petitioners

Mr. M. A. J. Shaikh, Advocate for respondent Nos. 1 and 2.

CORAM : R. M. JOSHI, J.

DATE : 5th SEPTEMBER, 2023

P.C. :-

1. Criminal Writ Petition No. 926 of 2019 is filed by wife against the impugned order dated 15th May, 2019 passed by the learned Addl. Sessions Judge, Shrirampur in Criminal Appeal No. 3 of 2018. Learned counsel for the petitioners makes statement on instructions that he is restricting the challenge to the said order only to the extent of the order issuing direction to respondent No.1 to secure alternate accommodation on payment of rent. He further made categorical statement that he does not wish to challenge the order modified by Appellate Court in respect of petitioner No.2.

2. It is his further contention that the wife along with the child is residing in the premises at City Survey No. 1804, Belapur, Tal. Shrirampur, Dist. Ahmednagar since time of her marriage and the learned JMFC in its order passed in Cri.M.A. No. 214/2014 has directed the husband and his brother not to obstruct them from staying there.

3. Learned counsel in Criminal Writ Petition No. 1100 of 2019 for petitioner brother-in-law of respondent No.1 therein submits that there is absolutely no allegation against him with regard to causing of any domestic violence the wife of his brother. In this regard attention of the Court is drawn to the order of the learned Appellate Court wherein the facts averred in the application are reproduced. Perusal of the said facts indicate that there is no allegation against the brother-in-law of

committing any act of domestic violence against respondent No.1. The only the allegation against him is that when the husband used to quarrel and beat wife, the brother of the husband did not give understanding to him. The allegation is also there to the extent that they used to instigate the husband demand money from the parents of the wife. All these allegations on the face of it do not constitute any domestic violence and as such the finding recorded by the learned Appellate Court are consistent with the pleadings and evidence on record. The said findings therefore do not deserve any interference. As such the modification of the order caused by the learned Appellate Court by passing impugned order dated 15th May, 2019 to the extent of petitioner No.2 in Criminal Writ Petition No. 1100 of 2019 cannot be faulted with.

5. Learned counsel for the husband has submitted that it is second marriage of both and there was a suppression fact that at the time of the performance of marriage between them, the erstwhile marriage of the wife was not dissolved. In this regard learned counsel for the petitioner has invited attention of this court to the observations made by the learned JMFC wherein the admission of the wife to that extent is recorded. On behalf of husband it is submitted that the property in respect of which the direction is issued by the learned JMFC is ancestral joint family property and that the wife is preventing the petitioners from

entering in the said property.

6. Though such submission is made across the bar however there absolutely no evidence on record to indicate so. It is not in dispute that since marriage wife along with the child is residing at the City Survey No. 1804, Belapur, Tal. Shrirampur, Dist. Ahmednagar. Learned JMFC while issuing direction for maintenance and passing protection order has rightly issued direction to the husband preventing him for causing any obstruction to the wife and child from their residence therein. The appellate Court has modified the said order directing the respondent No.1 to secure alternate accommodation of one room and kitchen with payment of rent of Rs. 3000/- without any justification. Only reason recorded therefore is that it is an ancestral property of husband and brother-in-law of wife. In absence of any case being made out that they are prevented from enjoying their own property or that any partition of property has taken place, whereby any exclusive right of either of there is created on any particular partition of house, it was not open for the Appellate Court to direct removal of wife and child from her matrimonial house. There is nothing on record to indicate that any partition is effected of the said property. In absence of any such material on record, it was not open for the learned Appellate Court to modify the said order at the instance of the husband. In such circumstances, the modification

of the order to the extent of the respondent No.1, to secure alternate accommodation of one room and kitchen deserves to be interfered with.

7. As far as challenge to the validity of marriage is concerned, though it is the case of the husband that there is no valid marriage however there is no denial of the fact that they were residing together like married couple and a child is also begotten out of the said relationship.

Section 2(f) defines domestic relationship as,

(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

8. This definition more than clearly shows that a relationship in the nature of marriage is also covered. At this stage the said evidence is more than sufficient to make the husband to pay maintenance to the wife as well as child. Thus, this Court finds no substance in the said objection raised by the husband with regard to the direction for payment maintenance.

9. In the result Criminal Writ Petition No. 926 of 2019 is partly allowed. Impugned order passed by Appellate Court directing the husband to make provision of alternate accommodation for wife and child is set aside. Order of JMFC, preventing husband from obstructing their

right to reside in matrimonial house is restored. Order passed against brother-in-law by JMFC is set aside. Criminal Writ Petition No. 1100 of 2019 stands dismissed.

(R. M. JOSHI, J.)

ssp