

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

CRIMINAL WRIT PETITION NO. 1330 OF 2022

Shantilal Shivling More,
age: 52 years, Occ: Labour,
R/o Chakarwadi, Beed,
Tq. & District Beed.

Petitioner

Versus

Manisha Shantilal More,
age: 45 years, Occ: Household,
R/o Yellambghat, Beed,
Tq. & District Beed.

Respondent

Mr. Swapnil S. Dargad, advocate for the Petitioner
Mr. Shivaji K. Naikwade, advocate for the Respondent

CORAM : SANDIPKUMAR C. MORE, J.
DATE : 10th OCTOBER, 2023.

JUDGMENT :

1 Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 By way of this writ petition, petitioner challenges the legality and correctness of the order dated 12.05.2022, passed by the learned Chief Judicial Magistrate, Beed in Criminal Misc. Application No. 2492/2020, below Exhibit-7 as

well as the judgment and order dated 24.08.2022, passed by the learned Additional Sessions Judge, Beed in Criminal Appeal No. 49/2022, filed by the petitioner against the impugned order passed by the learned Chief Judicial Magistrate, Beed.

3 The petitioner got married with Respondent on 19.05.1994 at village Yelambghat, District Beed. However, dispute arose between them and, therefore, the respondent-wife started residing separately from the petitioner since the year 1996. She was residing at her parental house. She had also filed Sessions Case No. 42/1997 against the petitioner and his family members for the offences punishable under Sections 498A, 323, 342, 506 and 313 read with Section 34 of the Indian Penal Code. However, the concerned Additional Sessions Judge, Beed, had acquitted the petitioner and other accused vide judgment and order dated 06.10.2000. Suddenly in the year 2022 i.e. after a gap of around 25 years, Respondent-wife approached the learned Chief Judicial Magistrate, Beed, and filed Criminal Misc. Application No. 2492 of 2020 under the provisions of Sections 12, 17, 18, 20

and 22 of the Protection of Women from Domestic Violence Act, 2005, (for short, “the D.V. Act”) on the ground that there was illtreatment to her by the petitioner. In that application, she had also filed an application Exhibit-7 under the provisions of Section 23 of the D. V. Act for grant of interim maintenance. Though the petitioner resisted the said application by filing reply, but the learned Chief Judicial Magistrate, Beed, partly allowed the same and directed the present petitioner to pay an amount of Rs.4000/- per month to the present respondent-wife as an interim maintenance.

4 The petitioner, being dissatisfied by the said order of interim maintenance, had filed Criminal Appeal No. 49 of 2022, but the concerned Additional Sessions Judge, Beed, vide judgment dated 24.08.2022, rejected the said appeal. Hence, the petitioner has challenged the orders and judgments of both the Courts below by way of this writ petition mainly on the ground that, whether relationship between the parties could be treated as domestic relationship, especially when they are residing separately for more than 25 years.

5 The learned Counsel for the petitioner submits that it is not disputed that since 1996, the respondent-wife is residing separately from the petitioner-husband at her parental house and, therefore, in the absence of any domestic relationship thereafter, she cannot claim benefits under the provisions of D. V. Act, as claimed before the learned Chief Judicial Magistrate, Beed. He further pointed out that the respondent-wife could not establish in Sessions Case No. 42/1997, the fact that she was illtreated by the petitioner on account of her forcible abortion and the judgment, in that case, resulting in acquittal of the petitioner, attained finality. According to him, Criminal Misc. Application No. 2492/2020 itself is not maintainable since the Protection of Women From Domestic Violence Act came into force in the year 2005 and prior to that, there was no domestic relationship between the parties. For that purpose, learned Counsel for the petitioner relied upon the following judgments:

- (i) In the case of **Umakant Havgirao Bondre and others Vs. Sakshi @ Sonali and others**, Law Finder Doc Id # 2042870.

(ii) In the case of **Kishor Shrirampant Kale Vs. Sou. Shalini Kishor Kale and others**, reported in 2010 (3) Bom. C. R. (Cri.) 694.

6 On the contrary, learned Counsel for the Respondent-wife strongly opposed the submissions made on behalf of the petitioner on the ground that the order dated 12.05.2022 granting interim maintenance to the respondent-wife is only an interim arrangement and the main application is still pending. According to him, the issue of maintainability of the aforesaid application can be decided finally at the time of final disposal of the aforesaid application under the provisions of the D. V. Act.

7 Admittedly, marriage of the petitioner and respondent took place in the year 1994 and they started residing separately from the year 1996. Moreover, the acquittal of the petitioner and his relatives in Sessions Case No. 42/1997, lodged at the instance of respondent-wife, is also not in dispute. Though the learned Counsel for the petitioner has challenged the impugned below Exhibit-7 granting interim

maintenance on the ground that there was no domestic relationship existed between the parties at the time of filing the same, but it appears that the petitioner has challenged the said order below Exhibit-7 mainly on the ground of maintainability of main application i.e. Criminal Misc. Application No.2492/2020.

8 The learned Counsel for the petitioner heavily relied upon the judgments as mentioned above. The judgment in the case of **Umakant Vs. Sakshi @ Sonali** (*supra*) which is passed by this Court, but the same is in respect of right of the wife in shared household. In the instant matter, the issue is different and, therefore, the said judgment is not applicable to the facts and circumstances of this case. Further, the learned Counsel for the petitioner also relied upon acquittal of the petitioner and his relatives in Sessions Case No. 42/1997 and contended that the petitioner has already been released from the charge under Section 498A of the Indian Penal Code and, therefore, the illtreatment of respondent-wife, at the hands of the petitioner-husband, could not be proved and as such, there is no question of domestic violence caused to the respondent-

wife. Though the judgment of acquittal is relied upon, but the concept of cruelty under Section 498A of the Indian Penal Code and the concept of domestic violence under the provisions of D. V. Act, are different. The definition of domestic violence is more exhaustive than the cruelty contemplated in Section 498A of the Indian Penal Code and, therefore, the domestic violence alleged by the respondent-wife, in her application under the provisions of D. V. Act, needs to be considered separately and in the light of its exhaustive definition. The same can be possible at the time of final disposal of the Criminal Misc. Application.

9 The main ground of challenge, in this petition, appears to be maintainability of such application under the provisions of D. V. Act. In the case of **Kishor Vs. Sou. Shalini** (*supra*), the Nagpur Bench of this Court has made following observations:

“14 Perusal of the Explanation – II shows that the Court is required to take into consideration overall facts and circumstances. Explanation – II appears to have been inserted

specifically with a view to enable the Court to find out the deserving and undeserving cases, which will be filed under the provisions of the Act of 2005. In the instant case, the various factual aspects which I have noted above and in particular regarding the total eclipse for the period of 15 long years and in the absence of any complaint in the recent past thereof or within reasonable period, this Court is of the opinion that overall facts and circumstances of this case clearly show that even if the averments in the complaint are taken to be true at their face value, no case of domestic violence can even be inferred by the Court. The respondents could have adopted their remedy available under the other Laws for enhancement of maintenance or accommodation or rental or as the case may be, but certainly in the light of the above discussion, the respondents were not entitled to take recourse to the Act of 2005. Consequently, the Court did not get jurisdiction under Section 27 of the Act of 2005 to entertain the complaint which was not maintainable for the above reasons. Both respondents, however, were entitled to take recourse to remedies under other Laws.

15 It is true as argued by learned Counsel for the respondents that the Act of 2005 is beneficial piece of legislation, but then the provisions of the Act of 2005 and in particular

Explanation – II thereof clearly show tht domestic violence cannot readily be inferred but will have to be found out on the facts and circumstances of each case. In the instant case, according to me, domestic violence having been alleged only after 15 years by the respondents would constitute an abuse of process of law. Certainly this beneficial piece of legislation would be available to those who are entitled to the benefits thereof and in the instant case, I have found that the respondents are not entitled to at least under the Act of 2005, though they may be entitled to the reliefs sought by them in the proceedings in some other Law.

16 In the result, writ petition must succeed. Hence, I make the following order:

ORDER

{I} Rule is, therefore, made absolute and it is held that Misc. Criminal Complaint Case No. 314/2007 before the Judicial Magistrate First Class, Court No.5, Amravati under Section 12 read with Sections 19 and 20 of the Protection of Women From Domestic Violence Act, 2005 is not maintainable and is thus quashed and consequently, all the orders passed in the said complaint by the Courts below are quashed.

No order as to costs.

Petition allowed.”

10 On going through the aforesaid observations, it appears that this Court has held that when the application under the provisions of Domestic Violence Act was not maintainable after a big gap of 15 years of residing separately, the respondent-wife was not entitled to claim reliefs under the said Act, which subsequently came into force. After going through the judgment, it is evident that in the said case, the husband and wife were not in contact with each other physically or otherwise for last 15 years before filing the Complaint under the provisions of D. V. Act by the wife, which was, in fact, filed for want of higher amount of maintenance and rental amount in lieu of accommodation. After going through the aforesaid observations of this Court, it appears that this Court had quashed the Complaint in the aforesaid case, which was filed under Sections 12, 19 and 20 of the D. V. Act, mainly because domestic violence alleged, in the said case, was caused way back in the year 1996 and, therefore, after a big gap of 15 years, the contention raised by the wife that her husband committed domestic violence by not paying any maintenance, was apparently incorrect. This Court has

specifically held that the wife is not entitled for the reliefs at least under the D. V. Act of 2005, though she may be entitled to the reliefs sought by her in the proceedings under some other Law. It is significant to note that before filing such application under the provisions of D. V. Act, the wife, in the said case, was already getting maintenance awarded under the provisions of other Law and in the said application, she had only claimed enhancement of the same. Though the facts of that case are somewhat similar to the instant case, but in the instant case, the respondent-wife was not getting any maintenance under the provisions of other Law and she directly claimed maintenance, for the first time, in Criminal Misc. Application No. 2492/2020 before the learned Chief Judicial Magistrate, Beed. Moreover, it is extremely important to note that the order below Exhibit-7 is only an interim arrangement in respect of maintenance to the respondent-wife and the main application is still pending.

11 The learned Counsel for the petitioner strongly submitted that when the main application of the respondent-wife is not maintainable, in the light of observations made by

this Court in the aforesaid case, then the order granting interim maintenance is also not sustainable in the eye of law. However, this is not a quashing proceeding and the main application of the respondent-wife is still pending. Therefore, the observations made by this Court, in the aforesaid case, will have to be considered at the time of final hearing of the main application i.e. Criminal Misc. Application No. 2492/2020 by the concerned Court.

12 At this stage, what is material is that the marital tie between the parties is still in existence and, therefore, being the husband, it is the prime responsibility of the petitioner to maintain his wife i.e. the respondent. At the most, so far as the aspect of maintainability of the main application is concerned, the concerned Court i.e. the Chief Judicial Magistrate, Beed, can be directed to dispose of the main application expeditiously on its own merit and in the light of observations of this Court in the case of **Kishor Vs. Sou. Shalini** (*supra*), as regards the aspect of maintainability.

13 Considering all these facts, no interference is required in the aforesaid orders passed by both the Courts below, at this juncture.

14 Accordingly, following order is passed:

(i) Criminal Writ Petition is hereby dismissed. However, it is directed that the learned Chief Judicial Magistrate, Beed, shall make an endeavour to dispose of the main Criminal Misc. Application No. 2492/2020, filed by the respondent-wife, as early as possible and preferably within a period of six months from the date of receipt of writ/order of this Court.

(ii) Rule discharged accordingly.

SANDIPKUMAR C. MORE
JUDGE

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