

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

CRIMINAL REVISION APPLICATION NO.233 OF 2018

1. Sunil Gangadhar Kadam
Age 33 yrs Occ Service
2. Gangadhar Jalbaji Kadam
Age 63 yrs Occ Pensioner
3. Sudhir Gangadhar Kadam,
Age 30 yrs Occ. Nil,
All r/o Paldewar Complex, Behind Arya Bhavan
Near Pansare Chowk, Shivajinagar,
Dharmabad Tq Dhamrambad,
Dist. Nanded. ...Petitioners

Versus

1. Jayashri Sunil Kadam
Age 30 yrs Occ HH
R/o Near UPP Colony,
Sainagar, Umri
Tq Umri Dist. Nanded
2. The State of Maharashtra ...Respondents

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Advocate for Applicants : Mr. Bhavthankar Vivek Vasantrao
APP for Respondent/State : Mr. S.P. Deshmukh
Advocate for Respondent No.1 : Mr. S.C. Bhosle

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CORAM : S.G. MEHARE, J.

DATED : MARCH 16, 2023

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally
with the consent of parties.
2. Heard the respective parties at length.

3. The husband has preferred the revision against the order of the Additional Sessions Judge, Bhokar in Criminal Appeal No.14 of 2016 dated 06.06.2018.

4. The respondent/wife had filed an application under Section 12 of the Protection of Women From Domestic Violence Act, 2005 (for short 'DV Act') making allegations that the domestic violence was committed with her. She had made various allegations. However, the learned Judicial Magistrate considering the material on record and appreciating the evidence came to the conclusion that whatever she deposed before the Court was not pleaded in her application and what she had pleaded, was not deposed before the Court. However, the learned Additional Sessions Judge, Bhokar affirmed the finding of the learned Judicial Magistrate First Class for non-commission of domestic violence, but considered the case as if it is an application under Section 125 of the Criminal Procedure Code. He held that the present applicant refused and neglected to maintain the respondent/wife and granted her the maintenance.

5. Learned counsel for the applicant reading both the judgments has pointed out that the findings as regards the domestic violence are consistent. However, the finding recorded by the learned Additional Sessions Judge, Bhokar that the present applicant refused and neglected to maintain her is contrary to the law. No such issue was before the learned Judicial Magistrate. Therefore, he has

committed a grave error of law in considering the provisions of other law, which were not before the trial Court. Therefore, it is liable to be set aside.

6. Learned counsel for the respondent/wife would argue that there was a communication gap between the lawyer and respondent no.2. The lawyer did not take instructions properly. However, there was evidence that she was ill-treated for demand of dowry for construction of the house. Hence, she was driven away from her house. This was sufficient to believe that the domestic violence had been committed with her. However, she did not preferred the revision before this Court dissatisfied with the impugned judgments.

7. Domestic violence is *sine qua non* for the reliefs to be granted to the aggrieved person under the D.V. Act. The term 'domestic violence' has been defined in the said Act. There are various types of domestic violence i.e. physical, mental, sexual, verbal and emotional and economic. The burden to prove domestic violence, lies on the aggrieved person.

8. Perused the judgment and order passed by the learned Judicial Magistrate. He has minutely scrutinized the evidence led by the respondent/wife and observed that whatever the allegations were levelled against the applicant by respondent in her application, she did not deposed on one hand and on the other hand whatever she

deposed before the Court was not pleaded. The learned Additional Sessions Judge also affirmed the finding of the trial Court that there was no domestic violence. She is not entitled for monetary relief, house rent, refund of dowry and compensation.

9. The law is well settled that a person having remedies under the various Acts may exercise it independently. The Domestic Violence Act is a law in addition to and not in derogation of the provisions of any other law, for the time being in force. The wife may simultaneously claim the reliefs under Domestic Violence Act as well as under Section 125 of Criminal Procedure Code. The tests to prove the domestic violence and refusal and neglect to maintain are different. There were no provisions in the Domestic Violence Act to test the refusal and neglect to maintain. The concept of domestic violence is specific as provided in D.V. Act. It could not be compared with the concept of Section 125 of Criminal Procedure Code. She never pleaded that the applicant/husband refused and neglected her. It was not also the issue before the trial Court. Therefore, this Court is of the view that the subordinate appellate Court cannot travel beyond the pleading and the laws involved in the case. Considering the concept of refusal and neglect and granting the maintenance to wife in D.V. Act case is out of jurisdiction and exaggeration. The order of the learned Additional Sessions Judge, Bhokar is illegal, erroneous and improper and liable to be set aside. Hence, the following order :

ORDER

- I) Revision application is allowed.
- II) The order passed by the learned Additional Sessions Judge, Bhokar in Criminal Appeal No.14 of 2016 dated 06.06.2018 is quashed and set aside.
- III) No order as to costs.
- IV) Rule is made absolute in above terms.

(S.G. MEHARE, J.)