

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

**42 CRIMINAL WRIT PETITION NO.1355 OF 2018
WITH REVN/64/2022**

**RIYAZ SHAIKH YAKUB MANYAR
VERSUS
THE STATE OF MAHARASHTRA AND ANR**

Mr.N.S. Shah h.f. Mr. Swapnil S. Patil, Advocate for the petitioner.
Mr.Y.G. Gujarati, APP for the respondent/State.
Mr.V.B. Kulkarni, Advocate for respondent No.2.

**CORAM : KISHORE C. SANT, J.
DATED : 24.04.2023**

PC :-

01. Heard both the parties. Both the matters are taken together and decided together by consent of the parties.

02. Criminal Writ Petition No.1355 of 2018 is filed by the husband challenging the judgment and order passed by the learned Additional Sessions Judge, Jalgaon in Criminal Revision Application No.241 of 2016, whereby the revision application filed by the husband came to be dismissed. In the revision, the order passed by the learned JMFC, Jalgaon allowing application under section 125 of the Cr.PC. filed by the respondent-wife came to be confirmed. The petitioner was directed to pay to the wife an amount of

Rs.2500/- towards maintenance and Rs.2000/- towards expenses of the application.

03. In Criminal Revision Application, the husband challenged the judgment and order dated 26.10.2021, passed in Criminal Appeal No.38 of 2016 by the learned Sessions Judge, Jalgaon. The learned Sessions Judge by the impugned judgment and order allowed the appeal partly and set aside the order passed by the learned Trial Court in Criminal Misc. Application No.185 of 2013 and directed the husband to pay Rs.2500/- towards maintenance to the applicant from the date of application. The husband was further directed to pay Rs.3000/- towards costs of the proceedings.

04. The learned Trial Court in Cri. Misc. Application No.185 2013 was pleased to reject the application of the wife against all the in-laws including the husband. By way of the impugned judgment dated 29.04.2015 passed by the learned JMFC, Jalgaon in Cri.M.A. No.185 of 2013 it is held that no violence of any kind is proved by the wife.

05. The facts in short are that the petitioner and respondent married

on 04.10.2009. For initial years both the parties stayed together. However, later on the husband started refusing and neglecting to maintain the wife. The wife, therefore, filed application under the DV Act on the allegation that because of act of violence, she was aborted twice. The accused husband used to assault her and used to demand Rs.5000/- per month from her father. When she was pregnant for the first time, she was given some tablets and made her to abort. She was not looked after well and she was reached to her parents' house. She was not taken back to the matrimonial house. The parents were told to pay Rs.1,50,000/- and it is only thereafter the wife will be taken to their matrimonial house. When the wife was pregnant for the second time, even that time she was not looked after properly. The husband used to assault her. He had given kicks on the stomach of the wife.

06. Cri.Misc. Application No. 185 of 2013 under the DV Act came to be rejected on 29.04.2015 thereby holding that no specific instances of domestic violence are proved. The wife thereafter again filed Cri. Misc. Application under section 125 of the Cr.P.C. Said proceeding came to be decided on 16.11.2016. Thereafter, the wife preferred Criminal Appeal No.38 of 2016 against the judgment in Cri. Misc.Application No.661 of 2015. The

husband filed Criminal Revision Application No.241 of 2016 in which orders came to be passed as stated in the opening para of this order.

07. Since Cri.W.P. No.1355 of 2018 came to be filed first, therefore judgment in the Sessions Court in revision is considered first by this Court. In proceedings under section 125 of the Cr.P.C., wife had made similar allegations as those made in a proceedings under the DV Act. The learned Trial Court held that since November, 2011, the wife was staying at parents' house and this fact is not even disputed by the husband. About the income, the wife has stated that the husband is a TV mechanic and knows to repair TV, DVD etc. and he also sales such items and earns Rs.30000/- to Rs.40000/- per month. As against that the husband only orally deposed before the Court that he is working as a labour and he is not earning this much. However, he has not produced any proof about his income. The learned Trial Court, therefore, held that in view of section 106 of the Indian Evidence Act, it was for the husband to prove his income and drawn adverse inference against him while granting maintenance. This finding of was confirmed by the learned Sessions Court. This Court finds that since these are the findings of the fact, in the limited scope in writ petition, this Court need not disturb the finding.

08. As regards, the proceedings under the DV Act is concerned, the learned Trial Judge has held that no instances are proved. The learned Sessions Judge in appeal considered the evidence in detail that was before the Trial Court. It is discussed that the observations of the Trial Court that Doctor or mother of the wife are not examined in support of case of wife that she was required to abort. It is rightly appreciated by the Court that the fact of abortion is not disputed. The Court has accepted that twice the wife has conceived and no proper treatment was given to her. Even domestic incident report was called from the officer. From the report it is said that it supports case of the wife about illtreatment given to her by the husband. The Court has rightly observed that there is no reason to disbelieve the domestic incident report. It is also rightly appreciated that the degree of proof that is required in other criminal proceedings is not expected in the proceedings under the DV Act. It is further discussed that the husband had stated that he had given triple talaq and marriage was dissolved. However, he could not give any date of such pronouncement. The Court has rightly therefore drawn inference that this fact shows that the husband was not interested in maintaining wife. The Court also took into consideration the deposition of the husband wherein he

admitted that he was in the business of supply of Banana. His father was working in Municipal Council and his brothers are also working in Municipal Council. Thus, it is sufficiently brought on record that he is from well to do family, while awarding maintenance of Rs.2500/- per month. In the DV Act the Sessions Court has already taken into consideration the amount that was granted to the wife under the proceedings under section 125 of Cr.PC. Considering all the above facts, this Court finds that the Sessions Court in DV proceedings, has rightly appreciated the evidence and there is no case made out by the husband to cause interference in the said order.

09. In the result, the Criminal Writ Petition and Criminal Revision Application both stand dismissed.

[KISHORE C. SANT, J.]