

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

CRIMINAL REVISION APPLICATION NO.358 OF 2019

1. Jyoti Kalyan Thakur,
age 31 years, Occ. nil.
2. Rahul @ Arpit Kalyan Thakur,
age 8 yrs, Occ. Education.
(applicant no.2 minor through
legal guardian mother applicant no.1)

Both r/o c/o Godabai Ramchandra Bedwal,
Morge Wasti, near Shri Babasaheb Khosare
Ward no.7, Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.

Applicants.
(orig applicants)

Versus

1. Kalyan Narayansingh Thakur,
age 51 yrs, occ. Service.
2. Narayansingh Bandusingh Thakur,
age 72 yrs, Occ. Retired.
3. Dwarkabai Narayansingh Thakur,
age 70 yrs, Occ. Household.
4. Santosh Narayan Thakur,
age 44 yrs, Occ. Printing press.
5. Imala Premsingh Shire,
age 57 yrs, Occ. household.
6. Bela Ranjitsingh Nimbwal,
age 38 yrs, Occ. Household.

7. Ranjitsingh Ramsingh Nimbwal,
age 49 yrs, Occ. service.
8. Sandip Ranjitsingh Nimbwal,
age 25 yrs, Occ. Education.
9. Pavan Ranjitsingh Nimbwal,
age 24 yrs, Occ. Education. ..Respondents..
(orig. respondents)

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Mr. S.R. Kedar, Advocate for applicants.
Mr. S.S. Khoche h/f Mr D.P. Palodkar, advocate for
respondent no.1.

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WITH
CRIMINAL WRIT PETITION NO.1956 OF 2019

Kalyan s/o Narayansingh Thakur,
age 50 yrs, Occ. Service,
R/o Shikshak colony, Sillod,
Tq. Sillod, Dist. Aurangabad. Petitioner

Versus

1. Jyoti Kalyan Thakur
Age 29 yrs, Occ. Beauty parlour,
c/o Godabai Ramchandra Bedwal,
Morge Wasti, Near Shri Babasaheb
Khorse, Shrirampur, Dist Ahmednagar.
2. Rahul @ Arpit Kalyan Thakur,
age 5 yrs, Occ. nil.
Resp no.2 minor under guardianship
of Jyoti Kalyan Thakur. Respondents.

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Mr. S.S. Khoche h/f Mr D.P. Palodkar, advocate petitioner
Mr. S.R. Kedar, Advocate for respondents.

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CRIMINAL WRIT PETITION NO.1957 OF 2019

Kalyan s/o Narayansingh Thakur,
age 50 yrs, Occ. Service,
R/o Shikshak colony, Sillod,
Tq. Sillod, Dist. Aurangabad. Petitioner

Versus

1. Jyoti Kalyan Thakur
Age 29 yrs, Occ. Beauty parlour,
c/o Godabai Ramchandra Bedwal,
Morge Wasti, Near Shri Babasaheb
Khorse, Shrirampur, Dist Ahmednagar.
2. Rahul @ Arpit Kalyan Thakur,
age 5 yrs, Occ. nil.
Resp no.2 minor under guardianship
of Jyoti Kalyan Thakur. Respondents.

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Mr. S.S. Khoche h/f Mr D.P. Palodkar, advocate petitioner
Mr. S.R. Kedar, Advocate for respondents.

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WITH
CRIMINAL APPLICATION NO.412 OF 2020
IN
CRIMINAL WRIT PETITION NO.1956 OF 2019

Kalyan s/o Narayansingh Thakur,
age 50 yrs, Occ. Service,
R/o Shikshak colony, Sillod,
Tq. Sillod, Dist. Aurangabad. Applicant

Versus

1. Jyoti Kalyan Thakur
Age 29 yrs, Occ. Beauty parlour,
c/o Godabai Ramchandra Bedwal,
Morge Wasti, Near Shri Babasaheb
Khorse, Shrirampur, Dist Ahmednagar.
2. Rahul @ Arpit Kalyan Thakur,
age 5 yrs, Occ. nil.
Resp no.2 minor under guardianship
of Jyoti Kalyan Thakur. Respondents.

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Mr. S.S. Khoche h/f Mr D.P Palodkar, advocate applicant
Mr. S.R. Kedar, Advocate for respondents.

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CORAM : S.G. CHAPALGAONKAR, J.

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**RESERVED ON : 31st OCTOBER, 2023.
PRONOUNCED ON : 30 NOVEMBER, 2023.**

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ORDER :-

1. The present criminal revision application alongwith criminal writ petitions are arising out of the proceedings in Criminal M.A. No.189 of 2013 instituted by the applicants Jyoti Kalyan Thakur and her son Kalyan Narayansingh Thakur invoking provisions of section 12 of the Domestic Violence Act, 2005 (for short hereinafter referred to as "DV Act") thereby seeking maintenance and residents order from Kalyan Narayansingh Thakur (husband). All the proceedings before this Court impugns

the common order passed by the learned Sessions Judge, Shrirampur dated 7.10.2019.

2. Brief facts, giving rise to the present proceedings can be summarized as under :-

The original applicants (wife and son) initiated proceedings under section 12 (1) of the Domestic Violence Act against the respondents i.e. husband and relatives alleging that respondents are guilty of domestic violence and sought various reliefs in terms of sections 18 to 22 of the DV Act. Applicant no.1 (wife) contends that she married with respondent no.1 (husband) on 17.6.2009 at Sillod. Couple is blessed with applicant no.2 out of the matrimonial relationship. The respondents no.2 to 6 are family members, who are residing in shared residence alongwith them. She alleges that respondent no.1 had extra marital relationship. He was addicted to liquor and ill-treated her while under influence. Further, there was persistent demand of Rs.2.00 Lakh for purchase of a four wheeler. Finally, she was driven out of her matrimonial home in the year 2012 forcing her to file a Misc. Criminal Application No.214 of 2012 against the respondent claiming relief under the provisions of DV Act. The said proceedings was culminated into amicable settlement. She resumed company with respondent no.1, however, there was no change in his behaviour. She was continuously tortured mentally and physically. She was mercilessly beaten on 13.9.2013 and again driven out of the matrimonial home. Since then, she is at

the mercy of her mother and residing with her at Shrirampur. Respondent no.1 failed to make any provision for her maintenance. Hence, the present proceedings.

3. Respondent nos.1 and 2 filed a reply/written statement. Matrimonial relationship is specifically admitted. Rest of the allegations regarding ill-treatment are denied. The specific averment is made in reply that the applicant as well as respondent no.1 have entered in their second matrimonial ties after separating from earlier spouses. The applicant had always inclination to reside with her parents and on her volition she left company of respondent no.1. It is further contended that the respondent has heavy financial burden towards repayment of loan amount and expenses towards his parents. He has no financial capacity to pay separate maintenance to the applicants. He is always ready and willing to maintain them. The application is false and frivolous, intended to harass the respondents. It is further stated that earlier proceeding initiated by the applicant was amicably settled and the applicant had joined company of respondent no.1, however, because of her weird behaviour, she made false allegations on character of the respondent before his colleagues.

4. The learned Magistrate recorded evidence of the parties and concluded that the applicants have proved Domestic violence and directed respondent no.1 to pay maintenance of

Rs.3,000/- to applicant no.1 and Rs.1,000/- to applicant no.2. The amount of Rs.50,000/- has been granted towards the compensation and Rs.25,000/- towards medical expenses. Separate amount of Rs.1,000/- p.m. has been granted towards house rent and litigation expenses of Rs.1,500/-. The order of learned Magistrate dated 24.2.2016 passed in M.A. No.189 of 2013 was challenged by the applicants seeking enhanced maintenance. The applicants filed criminal appeal no.25 of 2019 seeking enhancement. Respondent filed criminal appeal no.9 of 2019 and assailed the same order before the Sessions Court. Both the appeals were heard together. The appeal filed by applicants came to be partly allowed directing payment of enhanced maintenance of Rs.4,000/- each to the applicants. House rent was also enhanced to Rs.2,000/-. Appeal filed by the respondents came to be partly allowed and direction towards payments of compensation came to be restricted only against respondent no.1 while exonerating respondents no.2 to 6.

5. The aforesaid common judgment and order passed by the Sessions Judge, Shrirampur in Criminal Appeal No.9 of 2016 and 25 of 2019 dated 7.10.2019 is challenged before this Court by way of three different proceedings. Criminal revision application no.358 of 2019 is filed by the original applicants seeking further enhancement of maintenance amount and allied claims. Original respondent no.1/Husband has filed criminal writ petition no.1956 of 2019 against the order of enhancement of

maintenance amount, whereas criminal writ petition no.1957 of 2019 is filed challenging dismissal of criminal appeal no.9 of 2016.

6. Mr. Kedar, learned advocate appearing for the applicants/wife and son submit that respondent no.1-husband is getting salary of Rs.75,080/- p.m. being Government Servant, as a teacher. However, meager maintenance amount is granted. Even, amount provisioned towards house rent is inadequate looking to rent to procure lease hold premises. He would further submit that future medical expenses required for the applicants are not considered.

7. Per contra, Mr. S.S.Khoche h/f Mr. Palodkar, learned advocate appearing for the respondent-husband submits that both the Courts below failed to consider that applicant no.1 was a married woman when she solemnized second marriage with the applicant. There is nothing to indicate that she had legally divorced from her first husband. She could not produce decree of divorce. Therefore, in terms of section 5 of the Hindu Marriage Act, marriage of applicant no.1 with respondent no.1 was incompetent and *void abinitio*. Therefore, she cannot claim domestic relationship with the respondent. Consequently, her application ought to have been rejected. He would invite attention of this court to the cross-examination of applicant no.1, wherein she admits that she was driven out of home because she

was not possessing documents pertaining to decree of divorce with the earlier husband.

8. Learned counsel appearing for the respondent-husband would further submit that the respondent-husband is heavily burdened with the bank loan and expenses towards maintenance of other family members. Wife left the home on her own volition because of her demand of separate residence from in-laws. He would therefore submit that in absence of proof of domestic violence, application instituted by the wife ought to have been rejected.

9. Having considered the submissions advanced, it can be gathered that the applicant-wife approached the learned Magistrate invoking the provisions of section 12 of the DV Act alleging domestic violence by respondent-husband and other in-laws. She claimed various reliefs as provided under sections 18 to 22 of the DV Act. Specific averment is made in the application that applicant no.1 married with respondent no.1 on 17.6.2009 and applicant no.2 is borne out of the wedlock. Aforesaid contentions are specifically admitted in the reply filed on behalf of respondent no.1. He specifically admits solemnization of marriage on the given date and adds that matrimonial ties are intact as on the date of filing the reply. He specifically admits that it was their second marriage after divorce from earlier spouses. Pertinently, there is no allegation like suppression of the earlier

marriage or fraud exercised upon the respondent/husband. Apparently, such plea regarding validity of marriage is sought to be developed subsequently. Learned Magistrate as well as the Sessions Court have adequately dealt with the aforesaid aspect and observed that the respondent-husband cannot be permitted to take up such plea in view of his specific admissions in the reply/written statement. Even, the respondent-husband has not brought on record any specific evidence before Court to contend that marriage of the applicant was in subsistence when she performed second marriage with him. It is pertinent to note here that previously applicant/wife was required to file a similar proceeding vide Cri. M.A. No.214 of 2012 invoking the provisions of DV Act against respondent no.1-husband; which was amicably settled. In that proceeding, such defence was not raised. In that view of the matter, in my opinion, there is no substance in the contention of respondent no.1 that marriage between applicant no.1 and respondent is void abinitio or incompetent.

10. So far as Domestic violence is concerned, the applicant-wife has been driven out of the home alongwith applicant no.2. Version of the applicant is supported by evidence of her brother. Respondent no.1 husband has specifically stated during his evidence that he is not willing to have separate residence. Further, he is contending that marriage itself is incompetent. Taking into account conduct of the respondent/husband, both the Courts have concurrently held that

economic violence at the hands of respondent is proved and consequently granted reliefs in favour of applicants.

11. So far as quantum of maintenance and house rent allowance is concerned, Courts have found that the respondent-husband is getting take home salary of Rs.25,000/-. Further, he is burdened with maintenance of his other family members. Consequently, maintenance is quantified @ R.4,000/- to each of the applicants. House rent is also quantified to the tune of Rs.2,000/- p.m., which appears to be just and reasonable. The compensation of Rs.50,000/- is granted alongwith medical expenses of Rs.25,000/-, which appears to be in the tune of the material placed on record. In that view of the matter, I do not find any substance in the criminal revision application and the writ petitions. Hence, the following order.

ORDER

- i. Criminal Revision Application no.358 of 2019, Criminal Writ Petition No.1956 of 2019 and Criminal Writ Petition No.1957 of 2019 are dismissed.
- ii. In view of dismissal of criminal writ petitions, pending criminal application no.412 of 2020 in WP No.1956 of 2019 stands disposed off.

[S.G. CHAPALGAONKAR]
JUDGE

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