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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.491 OF 2020

VASANT
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	Madhura Milind Gadgil, Aged 52 years, Occupation Service, R/o C/o Madhav Shankar Belan Vasagade, Tal.Palus, District Sangli	...Petitioner
	Versus....	
1.	Milind Neelkant Gadgil, Age : 44 years, Occupation Business, R/o, C/o Smt.Vaijanta N. Gadgil, 210 Mangeshi Apartment, 100 Ft. Road, L.I.C. Colony, Ishrambag, Sangli	
2.	State of Maharashtra	...Respondents

Mr.Pramod G. Kathane (Appointed Advocate) with Mr.Samyak A. Bhatkar and Mr.Anjaykumar R. Kori for the Petitioner.

Madhura M. Gadgil – Petitioner present in Court.

Mr.S.S. Patwardhan for Respondent No.1.

Mr.N.B. Patil, APP for the State – Respondent No.2.

CORAM : RAJESH S. PATIL, J.

RESERVED ON : 6TH NOVEMBER, 2023.

PRONOUNCED : 28TH NOVEMBER, 2023.

JUDGMENT :-

1. Rule. Rule made returnable forthwith.

This Criminal Writ Petition is filed under Article 227 of the Constitution of India challenges the Judgment and Order dated 25 July 2019 passed by the Additional Sessions Judge, Sangli, in

Criminal Appeal No.150 of 2010, thereby setting aside the order of maintenance which was granted by the M.M. Court, Sangli, under the Domestic Violence Act (for short “D.V. Act.”).

FACTS:

2. It is undisputed that the Petitioner got married with Respondent No.1 on 26 May, 1990, at Miraj. On 5 July 1991, a female child namely Charuta alias Manasi, was born out of the said marriage.

3. The Petitioner has alleged that in the year 1997, Respondent No.1 drove her away from the matrimonial house and shortly thereafter, Respondent No.1 filed Divorce Petition No.27 of 1997 against the Petitioner, on the ground of cruelty, before the Court of Senior Division, Sangli. The Petitioner at the same time filed an Application for restitution of conjugal rights.

4. Divorce Petition filed by Respondent No.1 (husband) was allowed by judgment and order dated 17 August 2006 and application of the Petitioner (wife), for restitution of conjugal rights was dismissed.

5. On 3 October 2006, the Petitioner (wife) filed an Appeal challenging the divorce decree passed by the Court of Senior

Division, Sangli. In the meanwhile, custody of the daughter was given to Respondent No.1 (husband).

6. On 29 September 2007, Charuta alias Manasi, daughter of the Petitioner (wife) and Respondent No.1 (husband), died by committing suicide.

7. The Petitioner (wife) filed an application under D.V. Act before the M.M. Court, Sangli, against Respondent No.1 (husband).

8. The M.M. Court, Sangli, after hearing the Application for maintenance, by its Judgment and Order dated 13 April 2010, allowed the Application of the Petitioner (wife) and granted maintenance of Rs.2,300/- per month (inclusive of rent) to be paid by Respondent No.1 (husband).

9. Respondent No.1 (husband) challenged the Order of maintenance, by filing an Appeal before the Sessions Court, by way of Criminal Appeal No.150 of 2010.

10. In the meantime, Appeal filed by the Petitioner (wife), challenging the divorce decree passed by the Court of Senior Division, Sangli, was allowed by the Judgment and Order dated 26 February 2013. Second Appeal filed by Respondent No.1 (husband)

is admitted by this Court and is pending for hearing and final disposal.

11. The Sessions Court after hearing Criminal Appeal No.150 of 2010 of the Respondent No.1 (husband), wherein the Order of maintenance was under challenge, by its Judgment and Order dated 25 July 2019, allowed the Criminal Appeal by setting aside the Order of Maintenance.

12. Present Criminal Writ Petition challenges the Judgment and Order dated 25 July 2019 passed in Criminal Appeal No.150 of 2010.

13. This Court by its Order dated 10 February 2021 admitted the present Criminal Writ Petition and thereafter by Order dated 20 October 2023, matter was posted for hearing and final disposal.

SUBMISSIONS

14. Mr. Kathane made submissions on behalf of the Petitioner/Wife.

(i) Mr. Kathane submitted that the Sessions Judge committed an error in allowing the husband's Criminal Appeal and setting aside a well-reasoned Order passed by the M.M. Court, Sangli.

(ii) The Sessions Court committed a mistake by holding that the Application made by the Petitioner (wife) under Sections 18, 19, 20 and 22 of the Domestic Violence Act (for short 'D.V. Act') is not maintainable. Mr. Kathane further submitted that the Sessions Court did not consider the fact that the Petitioner (wife) had no place to reside of her own and had no source of income.

(iii) Mr. Kathane submitted that the Sessions Court committed an error by holding that Respondent No.1 (husband) did not have his own business and did not have sufficient income to pay compensation.

(iv) Mr. Kathane further submitted that the Sessions Court misdirected itself by holding that parties are separated by the decree of divorce which was granted before the D.V. Act came into existence. But in fact, the said decree of divorce was challenged by way of an Appeal by the Petitioner (wife) and the said fact is earlier recorded by the Sessions Judge in its Order.

(v) Mr. Kathane submitted that the Sessions Court erred in concluding that the marriage was dissolved by the decree of divorce, therefore, maintenance application was not maintainable in law.

(vi) Mr. Kathane referred to two Judgments to buttress his submission, first one was of *Prabha Tyagi V/s. Kamlesh Devi* reported in *(2022) 8 SCC 90* and the Judgment of *Kamatchi V/s. Lakshmi Narayanan*, reported in *AIR 2022 SC 2932*.

15. On the other hand, Mr. S.S. Patwardhan made his submissions on behalf of Respondent No.1 (husband).

(i) Mr. Patwardhan submitted that the Sessions Court has rightly considered the position in law and set aside the Judgment and Order of the M.M. Court.

(ii) Mr. Patwardhan further submitted that it is brought on record that the Petitioner (wife) was staying separately from the year 1997. Therefore, after such a long period there was no question about she being granted any kind of maintenance from the Respondent No.1 (husband).

(iii) Mr. Patwardhan further submitted that divorce was already granted by a Competent Court to the Respondent No.1 (husband), therefore, an Application under the D.V. Act for maintenance was not sustainable.

(iv) Mr. Patwardhan again further submitted that there is no merit in the Petition, Petition though admitted should now be dismissed.

ANYALYSIS & CONCLUSION

16. The M.M. Court, Sangli, after hearing the parties, by its Judgment in Order dated 13 April 2010, granted maintenance of Rs.2,300/- per month to the Petitioner (Wife). The Respondent No.1 (husband) challenged the said order of maintenance before the Session Judge. The Sessions Court set aside the Order that had granted maintenance.

17. The Sessions Judge has gone on a footing that once marriage is dissolved by a decree of divorce, the marriage is not into existence, therefore, the maintenance application filed after dissolution of marriage will not be maintainable. Further, the Sessions Court also held that there was no evidence produced by Petitioner (Wife) in respect of income of the husband and just by mentioning that the husband was into printing business, it does not help the cause that he was earning sufficiently. So also the fact that Petitioner (Wife) did not disclose anything about her income, the

M.M. Court was wrong in granting maintenance of sum of Rs.2,300/- per month to the Petitioner (Wife).

18. It will be important to note that the Application for maintenance filed by the Petitioner (Wife) on 21 January 2009 was under the Protection of Women from Domestic Violence Act, 2005 (for short "D.V. Act").

19. The D.V. Act came into force from 13 September, 2005. The Divorce Petition filed by the Respondent No.1 (Husband) was allowed by Judgment and Order dated 17 August 2006, i.e. after coming into force of the D.V. Act. It is a matter of fact that the Sessions Court, in its Order, has recorded that an appeal against granting of divorce decree was filed by the Petitioner (Wife) before the Court of Senior Division, Sangli. The said Appeal was filed on 3 October 2006. The custody of the daughter, aged 16, was granted to Respondent No.1 (Husband). Unfortunately, on 29 September 2007, the daughter of the Petitioner and of Respondent No.1, namely Charuta, committed suicide and died.

20. The Petitioner (Wife) thereafter, on 3 February 2009, filed an Application under Sections 18, 19, 20 and 22 of the D.V. Act before the M.M. Court, Sangli. In the said D.V. Application, on 13 October

2010, the M.M. Court by its Order granted the Petitioner maintenance of Rs. 2,300/- per month, to be paid by the Respondent No.1 (Husband).

21. The D.V. Act which came into force on 13 September 2005, Section 2(a) defines *aggrieved person*, which reads as under :

“2(a). ‘aggrieved person’ means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.”

[Emphasis Supplied]

So also, the D.V. Act defines *monetary relief* under Section 2(k), monetary relief as under :

“2(k). ‘monetary relief’ means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence.”

[Emphasis Supplied]

22. To answer the question whether the Petitioner (Wife) is entitled to file an Application under the D.V. Act after the dissolution of the marriage; the Judgment of Supreme Court in the case of ***Prabha Tyagi*** (*supra*) needs to be considered, since it deals with the

issue. There were three points for consideration before Supreme Court:

- (i) Whether the consideration of Domestic Incidents Report (for short “DIR”) is mandatory before initiating the proceedings under the D.V. Act in order to invoke substantive provisions of Sections 18 to 20 and 22 of the said Act ?*
- (ii) Whether it is mandatory for the aggrieved person to reside with those persons against whom the allegations have been levelled at the point of commission of violence ?*
- (iii) Whether there should be a subsisting domestic relationship between the aggrieved person and the persons against whom the relief is claimed ?*

23. In the present proceedings the answer to Point Nos. (ii) and (iii) would be necessary. Paragraph Nos.54, 55 and 75.3 of Judgment of ***Prabha Tyagi*** (supra) reads as under :-

“54. ...Question 2, namely, “Whether it is mandatory for the aggrieved person to reside with those persons against whom the allegations have been levelled” is accordingly answered. It is held that it is not mandatory for the aggrieved person to have actually lived or resided with those persons against whom the allegations have been levelled at the time of seeking relief. If a woman has the right to reside in a shared household, she can accordingly enforce her right under Section 17(1) of the DV Act. If a woman becomes an aggrieved person or victim of domestic violence, she can seek relief under the provisions of the DV Act including her right to live or reside in the shared household under Section 17 read with Section 19 of the DV Act.

55. Hence, the appellant herein had the right to live in a shared household i.e. her matrimonial home and being a victim or domestic violence could enforce her right to live or reside in the shared household under the provisions of the DV Act and to seek any other appropriate relief provided under the DV Act. This is irrespective of whether she actually lived in the shared household.

“75.3 (iii) Whether there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed ?

It is held that there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed vis-à-vis allegations of domestic violence. However, it is not necessary that at the time of filing of an application by an aggrieved person, the domestic relationship should be subsisting. In other words, even if an aggrieved person is not in a domestic relationship with the respondent in a shared household at the time of filing of an application under Section 12 of the DV Act but has at any point of time lived so or had the right to live and has been subjected to domestic violence or is later subjected to domestic violence on account of the domestic relationship, is entitled to file an application under Section 12 of the DV Act.”

[Emphasis supplied]

24. In the present proceedings, the Sessions Court has agreed with the M.M. Court, on findings of ‘Mental ill-treatment’ to the Petitioner. The findings to that extent are confirmed by me. The proposition of law laid down by the Supreme Court in the Judgment of ***Prabha Tyagi*** (supra) is squarely applicable to the present proceedings.

25. So also, it is a matter of fact that even though a divorce decree was granted, an Appeal to the said divorce decree was immediately filed by the Petitioner (Wife) and the decree of divorce was subsequently set aside by the *Ad-Hoc* District Judge, Sangli, vide Order dated 26 February 2013. However, without taking these facts into consideration, the Sessions Court has come to a conclusion that there was no marriage on the date of coming into force of D.V. Act

i.e., on 13 September 2005. According to me, the Sessions Court has committed grave error, not only on the point that there was an Appeal filed to the divorce decree, but also to the fact that before coming into force of the D.V. Act there was dissolution of marriage. Which is in fact, an incorrect finding. Therefore, I am setting aside the finding recorded by the Sessions Court.

26. As far as the issue pertaining to limitation period for filing an Application under D.V. Act is concerned, the Supreme Court in the Judgment of ***Kamatchi*** (*Supra*) has held that the application of Section 468 of Cr.P.C. will only come into play from the date of commission of such an offence till the time of Application preferred under Section 12 of D.V. Act, there is no offence committed in terms of the provision of the Act and as such there would never be a starting point for limitation from the date of the application under Section 12 of the Act. It will be important to place reliance upon Paragraph No.15 of the Judgment of ***Kamatchi*** (*Supra*), which reads as under :-

“15. Let us now consider the applicability of these principles to cases under the Act. The provisions of the Act contemplate filing of an application under Section 12 to initiate the proceedings before the concerned Magistrate. After hearing both sides and after taking into account the material on record, the Magistrate may pass an appropriate

order under Section 12 of the Act. It is only the breach of such order which constitutes an offence as is clear from Section 31 of the Act. Thus, if there be any offence committed in terms of the provisions of the Act, the limitation prescribed under Section 468 of the Code will apply from the date of commission of such offence. By the time an application is preferred under Section 12 of the Act, there is no offence committed in terms of the provisions of the Act and as such there would never be a starting point for limitation from the date of application under Section 12 of the Act. Such a starting point for limitation would arise only and only after there is a breach of an order passed under Section 12 of the Act.

[Emphasis supplied]

27. Therefore, I am not satisfied with the findings of the Sessions Court which records that since the Petitioner (Wife) has been residing separately since 1997 and hence, after such a long period there was no question about she being granted any kind of maintenance from the Respondent No.1 (Husband). As the incidents of domestic violence are continuous and so also, the marriage was subsisting though it got dissolved on 17 August 2006 through a decree of divorce, which was later set aside on 26 February 2013 by the Appellate Court, which was not considered by the Sessions Court. It is also a matter of fact that the Respondent No.1 (Husband) preferred an appeal to the Order dated 26 February 2013 passed by the Ad-hoc District Judge, Sangli before this Court by way of Second Appeal, however, the same is admitted and pending. As the Second

Appeal is admitted and no stay is granted, the divorce decree as of today stands nullified as per Order dated 26 February 2013. The Supreme Court in catena of Judgments has held that unless the decree is set aside by an appropriate proceeding in Appeal or Revision, a decree even if it be erroneous, is still binding between the parties. Reference can be drawn upon to the Judgment of Supreme Court in the case of ***My Palace Mutually Aided Co-operative Society Vs. B. Mahesh and Others*** reported in ***2022 SCC OnLine SC 1063***.

28. The Sessions Court has recorded a finding that there was no marriage at the date of filing the Application under DV Act as a reason for allowing the Appeal filed by Respondent No.1 (Husband). This issue is no more *res integra* and stands settled by the Supreme Court as well as this Court, holding that there is no prohibition under the D.V. Act for an aggrieved person against filing an Application for maintenance after the dissolution of marriage. The Sessions Court totally lost track to the fact that there is no such bar under the D.V. Act. In fact, the definition of *aggrieved person* is quite broad in its applicability and meaning. So also, the definition of *monetarily relief* under Section 2(k) is broad enough to bring into its wings, the Application made by the Petitioner (Wife).

29. As far as the amount of maintenance granted by the M. M. Court is concerned, the same was a paltry sum of Rs.2,300/- per month granted in the year 2010. Taking into consideration the facts and circumstances, as well as the cost of living today, according to me, the amount of maintenance granted is quite on the lower side. The Sessions Court's finding about the earning of the Respondent No.1 bears no sense, as it has held that the Respondent No.1 (Husband) was not having business of his own, entirely based on the admission by the Petitioner (Wife) that the Respondent No.1 was having business of screen printing. It further recorded that income of the Respondent No.1 (Husband) is in past tense and not in present tense or for that matter, in present continuous tense. According to me, the Sessions Court has not given a proper reasoning, instead placed its emphasis on to the grammatical aspect in the Application filed by the Petitioner and therefore, I am setting aside the same.

30. Hence, for the reasons recorded above, this Criminal Writ Petition is allowed with following directions:

(a) The impugned judgment and order dated 25 July 2019 passed by the Additional Sessions Judge, Sangli in Criminal Appeal

No.150 of 2010 is quashed and set aside and the order dated 13 April 2010, passed by the M.M. Court, Sangli is confirmed.

(b) The findings of Sessions Court, confirming the M.M. Court's findings on 'Mental illtreatment' stands confirmed.

(c) The Petitioner/Wife is granted liberty to approach appropriate court with appropriate Application to seek enhancement to the amount of maintenance.

(d) The Respondent No.1 is granted a time period of two months to clear all the outstanding amount of maintenance, as of date.

(RAJESH S. PATIL, J.)