

GRM

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 3209 OF 2021

Atul Amrut Raybole & Ors. ... Petitioners

V/s.

Shubhangi Atul Raybole & Anr. ... Respondents

Mr. Machhindra A. Patil, Adv. for the Petitioners.

Mr. Dilip Bodake, Adv. for Respondent no. 1.

Mr. A. R. Patil, APP for the State/Respondent No. 2.

CORAM : R. G. AVACHAT, J.

DATED : JANUARY 24, 2023

P.C. :

Heard.

2. The challenge in this writ petition is to the judgment and order dated 12/05/2021 passed by learned Additional Sessions Judge, Vaduj in Criminal Appeal No. 1/2018. Vide impugned judgment and order, the order rejecting the application moved by respondent no. 1-Shubhangi Atul Raybole/wife under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short “**PWDVA**”) came to be allowed.

3. Petitioner no. 1-Atul Amrut Raybole/husband has been directed to pay the respondent/wife the maintenance amount @ of Rs. 5,000/- p.m. besides a sum of Rs. 1,000/- p.m. towards rent for her separate residence. The petitioner/husband along with his

parents have therefore preferred the present writ petition.

4. A short question that falls for consideration in this writ petition is as to “whether a divorced wife is entitled to claim maintenance under PWDVA?”.

5. The facts, in brief, giving rise to the present writ petition are as follows :-

The respondent/wife married the petitioner/husband on 06/05/2013. The petitioner/husband is serving as a Police Constable. Both the petitioner/husband and respondent/wife stayed together in Pune upto 30/07/2013. It is the case of respondent/wife that petitioner/husband ill-treated her and turned her out of the matrimonial home. The petitioner-husband has his story to tell. According to him, the respondent/wife ill-treated him and it was she, who left the matrimonial home for no return. He therefore preferred a petition for dissolution of marriage. The same has been allowed. The respondent/wife has not taken exception to the decree of divorce. As such, marital relationship between the two no longer exists.

6. Learned Advocate for the petitioner would submit that in view of there being no marital relationship in existence, since the day on which the decree for dissolution of marriage came to be passed, the respondent/wife is not entitled to any of the reliefs under PWDVA.

a. Learned Advocate has relied on the judgment of this Court in the case of **Sadhana Hemant Walwatkar vs. Hemant Shalikramji Walwatkar** reported in **2019(3) Bom.C.R.(Cri.) 542**. Learned Advocate also took me through certain oral evidence of the parties to ultimately urge for allowing the petition. According to him, all the arrears of maintenance until the date of dissolution of marriage have been cleared. The Trial Court insisted the petitioner/husband to deposit further amount. He had therefore to deposit a sum of Rs. 2,50,000/- over and above what was due to the respondent/wife. Learned Advocate therefore urged for direction to the Trial Court to return the amount paid in excess of what was due to the respondent/wife.

7. Learned Advocate for the respondent/wife would on the other hand submit that the petitioner/husband ill-treated her. The petitioner/husband made her miserable to stay with him. She was ultimately turned out of matrimonial home. According to learned Advocate, the scheme of PWDVA undoubtedly indicates that even a wife, who has been divorced or who has obtained a divorce, is entitled to claim relief of maintenance and ancillary reliefs by preferring an application under Section 12 of PWDVA.

a. Learned Advocate has relied on the judgment of this Court in the case of **Popatrao vs. The State of Maharashtra and Others** reported in **MANU/MH/0634/2022**.

8. Considered the submissions advanced. Perused the evidence relied on. Also gone through the authorities.

9. Admittedly, the respondent/wife married the petitioner/husband on 06/05/2013. Both of them stayed together till 30/07/2013 only. It is a case of words against words. The petitioner/husband's case is that the respondent/wife had ill-treated him and left the matrimonial home for no return. He therefore preferred a petition for dissolution of marriage. Within days of filing of such petition, the respondent/wife preferred an application under Section 12 of PWDVA. The Trial Court rejected the respondent/wife's application. She therefore preferred an appeal, which came to be allowed in the terms stated hereinabove.

10. True, a decree of dissolution of marriage has been passed in favour of the petitioner/husband pending the respondent/wife's appeal under Section 29 of PWDVA. The record however indicates that before the Appellate Court, the fact of decree of divorce was not relied on. It is only before this Court the decree of divorce has been relied on. Be that as it may.

11. For answering the question involved in this writ petition, certain definitions under PWDVA need to be adverted to.

- Section 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.
- Section 2(f) “***domestic relationship***” means a relationship between two persons who live or have, at any point of time,

lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

- Section 2(q) “***respondent***” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act.

12. Close reading of definition of term “domestic relationship” suggests relationship between two persons, who live or have, at any point of time (necessarily in the past), lived together in a shared household, when they were related by consanguinity, marriage or through a relationship in the nature of marriage. This definition is wide enough to include a woman, who had, at one point of time, lived with her husband or with a person in a relationship like marriage. The Hon’ble Apex Court in the case of **Juveria Abdul Majid Patni vs. Atif Iqbal Mansoori and Another** reported in **LNIND 2014 SC 835**, in paragraph 31, has observed that,

“An act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Domestic Violence Act, 2005 including monetary relief under Section 20, Child Custody under Section 21, Compensation under Section 22 and interim or *ex-parte* order under Section 23 of the Domestic Violence Act,

2005.”

13. The petitioner being husband, was under statutory obligation to make provisions of maintenance of his wife. Since he failed to make such provision, the respondent/wife has no option but to prefer an application under Section 12 of PWDVA. However, the Trial Court rejected the application. The Appellate Court has granted her relief as stated hereinabove.

14. In view of this Court, the petitioner/husband is fortunate of having required to pay only a sum of Rs. 6,000/- p.m. to the respondent/wife, when he being in police service, drawing salary necessarily more than Rs. 25,000/- p.m. at the relevant time and by now much more than that.

15. Since the Appellate Court has rightly allowed the application directing the petitioner/husband to pay his wife the maintenance @ of Rs. 5,000/- p.m. and Rs. 1,000/- p.m. towards rent for her separate residence, this Court finds no reason to interfere with the order impugned herein.

16. In the result, the writ petition fails. The same is thus dismissed and disposed of accordingly.

17. Ad-interim relief to continue for next four weeks.

(R. G. AVACHAT, J.)