

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

CRIMINAL WRIT PETITION NO. 5283 OF 2017

Ramesh Govind Nalavade ..Petitioner
Versus
Reshma Ramesh Nalavade
(Former Name: Mangal Kisan Chature) & Anr ..Respondents

Mr. Ameya A. Pitale, i/b Mr. Ajit Ram Pitale, for Petitioner.
Ms. Smita Gaidhani, i/b Mr. Shekhar A. Ingawale, for Respondent No.1.
Mr. N.B. Patil, APP, for State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 18th JULY 2023**

PC :

1. The Petitioner has filed this Petition with a prayer for quashing of the proceeding initiated under the provisions of the Protection of Women from Domestic Violence Act 2005 (for short, “D.V. Act”) bearing D.V.M.A. No.123 of 2015 on the file of the Judicial Magistrate First Class, Ulhasnagar. At the outset, it must be noted that the Petitioner has not challenged any particular order in respect of these proceedings. He has not challenged the order whereby the Magistrate had issued notice to the Petitioner. His second prayer is for challenging the order dated 13th

September 2017 passed in the proceedings granting interim maintenance to the wife and the child. The first prayer is absolutely vague because no particular order is challenged in that behalf. But the matter has progressed further and the interim order is passed. Therefore, I am considering this matter, on the basis of submissions made by both the learned Counsel.

2. Heard Mr. Ameya Pitale learned Counsel for the Petitioner and Ms. Smita Gaidhani learned Counsel for the Respondent No.1.

3. The Respondent No.1 is the original complainant and the Petitioner is her husband. For the sake of convenience, the Petitioner is referred to as 'Petitioner (husband)' and the Respondent No.1 as the 'Respondent (wife)'

4. The Respondent (wife) has filed the proceedings under the D.V. Act on her behalf and on behalf of their son. It was filed against the Petitioner (husband), his parents and other relatives. In the present Petition, only the Petitioner (husband) is before the Court. It is mentioned in the complaint that they got married on

27th April 2009. They had a son from that marriage. The Petitioner (husband) was working in the Police department. After their marriage, the Petitioner (husband's) relatives used to humiliate, abuse and beat her. The Petitioner (husband) and his family had taken dowry from the Respondent (wife) and they used to constantly harass her regarding dowry. Initially, the Petitioner (husband) was behaving properly. The couple resided at Asangaon. The complaint further mentions that the Petitioner (husband) came in touch with their neighbor and developed intimate relations with her. The complaint mentions details about the relationship between the Petitioner (husband) and that lady. The Petitioner (husband) instead of mending his ways, started making allegations against the Respondent (wife). On 10th October 2011, the husband and his relatives threw her out of their house. They retained custody of the child. On 11th August 2011, with the help of Police, the Respondent (wife) could obtain the custody of their son. The Petitioner (husband) used to threaten the Respondent (wife) that he would involve her and her family members in the false cases as he was working in the Police

department. It is mentioned in the complaint that the Petitioner (husband) sent a notice for divorce to the Respondent (wife) in December 2012. The Respondent (wife) replied to that notice through her Advocate. But after that, in January 2013, the Petitioner (husband) kept her in dark about the proceedings and established physical relations with her again. This continued till July 2013. During that time the Respondent (wife) was residing separately but the Petitioner (husband) promised her that he would take her with him. During all this time, the Respondent (wife) was kept in dark about his real intentions. During that time, he continued with his divorce proceedings and obtained an ex-parte divorce from her. It is her case that the Petitioner (husband) had promised that he would withdraw the case of divorce. The Respondent (wife) trusted him and did not take steps to remain present in those proceedings, with the result, an ex-parte decree was passed. This was because of the breach of trust which she had placed on the Petitioner (husband). The divorce was obtained by the decree dated 9th July 2014. She came to know about this decree in October 2014. The Petitioner (husband) had

not informed her about the decree of divorce and had kept physical relations with her till September 2014. The Respondent (wife) was shocked to know about the divorce decree. She then took steps to set aside the ex-parte order. On these allegations, the Respondent (wife) filed a complaint under the D.V. Act and prayed for Rs.15,000/- by way of maintenance for herself and her son. She had also prayed for interim maintenance of Rs.10,000/- during the pendency of the proceedings.

5. The learned Magistrate issued notice to the Petitioner (husband) and his family vide his order dated 17th June 2015. Since the learned Magistrate has issued notice, I am considering the validity of the proceedings before the learned Magistrate. In the same proceedings, another order dated 13th September 2017, was passed by way of interim order granting Rs.2,500/- per month each to the wife and their son. The said order is also under challenge before this Court.

6. Learned counsel for the Petitioner submitted that once the divorce decree was in force, the proceedings under the D.V. Act

were not maintainable. He submitted that the D.V. proceedings cannot be used as a tool to overrule or set aside the decree of divorce. He relied on a judgment of the Hon'ble Supreme Court in the case of **Inderjit Singh Grewal v. State of Punjab & Anr** as reported in **[2011] 10 S.C.R. 557**. He submitted that as long as the decree of divorce is in force, the proceedings under the D.V. Act were not maintainable.

7. Learned Counsel for the Respondent (wife) on the other hand submitted that the term "aggrieved person" under the D.V. Act also includes a divorced wife. She relied on another judgment of the Hon'ble Supreme Court in the case of **Juveria Abdul Majid Patni v. Atif Iqbal Mansoori & Anr** as reported in **(2014) 10 SCC**. She submitted that in the present case, the Petitioner (husband) had played complete fraud on the Respondent (wife), and therefore, she deserves protection under the D.V. Act in the light of the statements made in the complaint filed by her.

8. I have considered these submissions. As far as the complaint under the D.V. Act is concerned, as reproduced herein

above, there is no doubt that the provisions of the D.V. Act are squarely attracted against the Petitioner (husband). Having an extra marital affair and on that ground harassing the Respondent (wife) would be squarely covered under the definition of 'Domestic Violence' as defined under Section 3 of the D.V. Act. It will certainly amount to mental abuse. The allegations also show how the Respondent (wife) was constantly harassed and threatened by the Petitioner (husband). The main contention of the learned Counsel for the Petitioner (husband) was that till the decree of divorce was in force, the proceedings under the D.V. Act were not maintainable. In this context, it is necessary to refer to the definition of aggrieved person under the D.V. Act which reads thus:

“2. Definitions. — In this Act, unless the context otherwise requires,

(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;”

9. In the case of **Juveria Abdul** (supra) in paragraph 30 the

Hon'ble Supreme Court has observed thus:

“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.”

10. In the present case also the act of domestic violence was in reference to the incidents which had taken place prior to the decree of divorce.

11. As far as reliance on **Inderjit Singh** case on behalf of the Petitioner (husband), is concerned, the facts of that case will have to be considered. In that case, the Petitioner (husband) and Respondent (wife) both had approached the competent Court for obtaining the decree of divorce, and therefore, on their statements that it was not possible for them to live together, the said decree of

divorce was passed. Subsequently, the Respondent (wife) made allegations that the decree of divorce was obtained by him through a sham transaction. Even after getting the divorce, both of them had been living together as husband and wife. After that, she was forced to leave the matrimonial house and then she had filed a complaint under the D.V. Act. She had also filed a Civil Suit for declaration that the judgment and decree granting divorce be declared as null and void. In paragraph-9, the Hon'ble Supreme Court has clearly mentioned that the case before them was required to be considered in the aforesaid factual backdrop. In the same paragraph the Hon'ble Supreme Court had reproduced her statement in the complaint dated 12th June 2009 that they had obtained decree of divorce by mutual consent as they wanted to settle in the United States, and therefore, they had decided to get divorce on paper, so that the husband could go to U.S.A. and get American citizenship by negotiating a marriage of convenience with some U.S. citizen, divorce her and again re-marry the complainant wife. In paragraph-11 of the said judgment, the Hon'ble Supreme Court held that where a person gets an order by

making misrepresentation or playing fraud upon the competent authority, such an order cannot be sustained in the eyes of the law as the fraud unravels everything. The question which was further decided by the Hon'ble Supreme Court was whether it was permissible for a party to plead the judgment and order as null and void without getting it set aside from the competent Court. In that context, the Hon'ble Supreme Court in paragraph-22 had clearly held that in the facts and circumstances of that case, the submission that the decree and order of divorce was null and void could not be taken note of unless the suit filed by the Respondent (wife) against the decree of divorce of decided in her favour. Thus repeatedly the Hon'ble Supreme Court had mentioned that in the facts and circumstances of that particular case, the proceedings under the D.V. Act amounted to abuse of process of the Court. In that particular case, the conduct of the Respondent (wife) itself amounted to abuse of process of law.

12. However, in the present case, the facts are completely different. In fact, the allegations in the complaint are that the Petitioner (husband) had played fraud on the Respondent (wife).

He had kept her in the dark and had obtained decree of divorce; and all this while he had kept physical relations with her. Thus the facts of Inderjit Singh's case are completely different, and therefore, that judgment will not be of any help to the Petitioner (husband).

13. In view of this discussion, the proceedings under the D.V. Act preferred by the Respondent (wife) against the Petitioner (husband) are perfectly maintainable. Apart from that, protection orders and maintenance are asked for in respect of their child as well. On that ground also the domestic violence complaint is maintainable.

14. As far as the order granting interim maintenance is concerned, after rightly observing that the wife-complainant had made out a prima facie case of commission of domestic violence particularly on the part of the Petitioner (husband), the learned Magistrate has considered the fact that the Petitioner (husband) had not provided any material to support his contention that the Petitioner (wife) was earning. Considering the basic minimum

requirement and necessity, the learned Magistrate has awarded interim maintenance of Rs.2,500/- per month each to the wife and their son. The said amount cannot be said to be unreasonable. Hence, I do not see any reason to interfere with that order either. With the result, I do not find any merit in the Petition.

15. The Petition is accordingly dismissed.

(SARANG V. KOTWAL, J.)