



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.1062/2019

Smt. Seema wd/o Gajanan Khokle,
aged about 30 years, Occ. Household,
r/o Patur, Tq. Patur, Dist. Akola.

.....PETITIONER

...V E R S U S...

1. Gopal s/o Digambar Khokle,
aged 31 yes, Occ. Agriculturist.
2. Mahadeo s/o Namdeo Khandare
aged 46 years, Occ. Service,

Both r/o Gahilot lay-out, near
rest house, Patur, Taluka Patur,
District Akola.

3. Arvind Sukhdev Wawage,
aged 41 years, Occ. Agriculturist,
r/o Karla, Tq. Patur, Dist. Akola.

...RESPONDENTS

Mr. R. R. Vyas, Advocate for petitioner.
Mr. A. M. Tirukh, Advocate for respondents.

CORAM:- ANIL L. PANSARE, J.
DATED :- 22.08.2023

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioner is challenging the judgment dated 01.07.2016 passed by Judicial Magistrate First Class, Patur, in Criminal Complaint Case No.91/2009 so also judgment dated 17.06.2019 passed by Sessions Court, Akola in Criminal Appeal

No.117/2016. The petitioner who is original applicant, has preferred application under the provisions of Protection of Women From Domestic Violence Act, 2005 against the respondent nos. 2 to 4 and against her husband (since deceased).

3. The petitioner hereinafter will be referred to as the applicant, the deceased husband as non applicant no.1, respondent no.1 as non applicant no.2, respondent no.2 as non applicant no.3 and respondent no.3 as non applicant no.4. Non applicant no.2 is brother in law, non applicant no.3 is husband and non applicant no.4 is husband of sister in law of the applicant.

4. It is the case of the applicant that on 25.03.2007, non applicant nos.1 to 4 had driven her out for not fulfilling the demand of Rs.50,000/-. It is alleged that non applicant no.1 at the instance of non applicant nos. 2 to 4 has ill treated her. The applicant has then made certain allegations of beatings at the hands of non applicants and accordingly filed application seeking residence in the house and further seeking order of maintenance.

5. I have gone through the complaint made by the applicant against the non applicants. The allegation is that the non applicant no.1 – husband, who had appeared before the trial

court, has deserted the applicant and neglected her and ill treated her and compelled her to live separately.

6. Though the applicant has made an attempt to show the genuineness in the complaint, the learned counsel for non applicants has rightly invited my attention to the allegation and the evidence that destroys the allegations. As stated earlier, the allegation is that the non applicants have driven her out of the house on 25.03.2007. The order of first appellate court indicates that the non applicant no.2, in his evidence, has proved that the applicant started residing separately with non applicant no.1 from 01.03.2007. The question, therefore, would be as to how non applicants could drive the applicant out of the house on 25.03.2007 when she was already residing separately from 01.03.2007.

7. The learned counsel for non applicants submits that this was one of the main grounds why the courts below have not believed the applicant's version. She could not, thus, prove domestic violence. That apart, it is pointed out that the applicant and non applicants were residing together in the house owned by one Mr. Deshmukh. Thus, the house which has been shared by the applicant and non applicants was a rented house.

8. Learned counsel for applicant submits that the non applicants have their own house at Khadeshwar Wetal. However, there is no evidence to indicate that the applicant and non applicants have ever resided together in the said house. Rather non applicant no.2 – Gopal has deposed in his evidence that their house at Khadeshwar Wetal was in a dilapidated condition and, therefore, his mother and others started residing in the rented house at Patur. The applicant has joined their company in the said house after her marriage with non applicant no.1. Thus prior to the marriage of applicant, the non applicants were residing in the rented house where the applicant accompanied them after her marriage.

9. This being the position and since both the courts below have rendered findings against the applicant, I do not find it appropriate to interfere with the concurrent findings of facts so rendered by both the courts below for there is hardly any scope to interfere with such concurrent findings in the petition under Article 227 of the Constitution of India. The petition, therefore, stands dismissed. Rule discharged. No order as to costs.

(Anil L. Pansare, J.)