



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

920 CRIMINAL WRIT PETITION NO. 91 OF 2022

Rajesh s/o Namdev Patil,
Age : 51 yrs. Occu. : Service,
R/o -A/32, Adarsh Nagar,
Khandwa Road, Khargaon (MP)

...PETITIONER
(Orig. Respondent)

VERSUS

01. Sou. Mrunalini w/o Rajesh Patil,
Age – 46 yrs. Occu – Service,
R/o – C/o – Shri Suresh Shriranghdar
Yeole, 92/2, Dixit Wadi, Jalgaon.

02. Durgaprasad s/o Rajesh Patil,
Age – 21 yrs. Occu – Education,
R/o – As above.

... FORMAL RESPONDENTS
(R-1 & 2 Orig, Applicants)

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Advocate for the Petitioner : Mr. Ajit M. Gholap
Advocate for Respondents : Mr. N. E. Deshmukh

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 03.12.2024

ORAL JUDGMENT :

1. Leave granted to invoke Section 482 of the Cr.P.C. with Article 227 of the Constitution of India in the cause title. The necessary amendment be carried out forthwith.

2. Rule. Rule made returnable forthwith and with consent of both the sides, heard finally at the stage of admission.

3. Having regard to the submissions canvassed on behalf of both the sides, I have gone through the record.

4. By the present Petition, the Petitioner husband has takes exception to the judgment and order dated 20.09.2021 passed by the Appellate Court in Criminal Appeal No. 51 of 2017, thereby confirmed the judgment and order dated 27.02.2017 passed by the learned Judicial Magistrate First Class, Court No.4, Jalgaon, in Summary Criminal Case No. 921 of 2009.

5. The learned counsel appearing for the Petitioner canvassed in vehemence that the marriage between the Petitioner and Respondent No.1 solemnized on 09.05.1999. Thereafter, on 11.09.2000 Respondent No.1 – wife left for her paternal home for delivery. On 12.10.2000, Respondent No. 2 born out of matrimonial relations between the Petitioner and Respondent No.1. Thereafter, Respondents No. 1 and 2 have filed Criminal Misc. Application No. 591 of 2001 under Section 125 of the Criminal Procedure Code and prayed for maintenance. Similarly, the Petitioner also filed the H.M.P No. 381 of 2001 at Indore and prayed for decree of restitution of conjugal rights. According to the

petitioner, the Respondent No.1 – wife started cohabiting with him w.e.f. on 20.05.2001 but she only cohabited with him till 19.07.2003, however, during said period the Respondent never allowed for consumption of marital relations. The Respondent always quarreled with him. Ultimately, on 31.12.2003, the learned Judicial Magistrate First Class passed an order in Criminal M. A. No. 591 of 2001 and granted monthly maintenance to the tune of Rs. 750/- for Respondent No.1 -wife and Rs. 500/- for Respondent No.2 -son.

6. Further, the Petitioner filed H.M.P. No. 393 of 2007 on 10.12.2007 and prayed for decree of divorce at Jalgaon. However, the Petitioner has filed an application for custody of Respondent No.2 – son. The learned trial Court was permitted him to talk with his son i.e. Respondent No.2 on cell phone subject to his wish and the Respondent No.1 wife will not object for said talk. Thereafter, on 11.02.2008 Respondent No.1 – wife filed H.M.P. No. 70/2008 and prayed for decree of restitution of conjugal rights.

7. During pendency of said Petition, Respondent No.1 also filed a complaint Summary Criminal Case No. 921 of 2009 under Sections 18, 19, 20, 22, 23 and 26 of the Protection of Women from

Domestic Violence Act, 2005 (for short D.V. Act). The Petitioner filed his say and strongly resisted the claim of Respondent No.1. On 27.02.2017, the learned Judicial Magistrate First Class passed an order and partly allowed Summary Criminal Case No. 921 of 2009 under Section 12 of the D.V. Act and granted Rs. 2,00,000/- (Rupees Two Lakhs) as compensation, however, declined to grant maintenance.

8. Being aggrieved by the said judgment and order, the Petitioner – husband had filed Regular Criminal Appeal No.51/2017 challenging the order dated 27.02.2017 to the extent of grant of compensation of Rs. 2,00,000/- whereas Respondents No. 1 and 2 filed Criminal Appeal No. 61 of 2017 to the extent of denial of maintenance.

9. On 20.09.2021, the learned Appellate Court passed the impugned order and dismissed both the appeals. In case in hand, the question arises, as to whether the amount of compensation granted under Section 22 of the D.V. Act is exorbitant or just and proper.

10. The learned counsel appearing for the Petitioner vehemently canvassed that Section 22 of D.V. Act does not contemplate specific amount of compensation, therefore, the learned trial Court could have granted reasonable compensation by considering social and

economical status of the Respondent -wife. It is further canvass that, the learned Appellate Court could have considered evidence available on record and ought to have modify the order of compensation. However, both the courts below failed to consider the evidence available on record and passed the impugned orders, which are illegal and bad in law and hence prayed for dismissal of the Petition.

11. Per contra, the learned counsel appearing for the Respondents strongly opposed the Petition. It is contended that the Petitioner is serving with the BSNL which is Central Government undertaking establishment and drawing salary more than Rs. 50,000/- per month. Respondents No. 1 and 2 are surviving at the mercy of the Petitioner, however, the Petitioner failed to oblige his social duties to maintain Respondent Nos. 1 and 2. Therefore, considering the economical and social status of the Petitioner, the learned trial Court granted Rs. 2,00,000/- as compensation under Section 22 of the D.V. Act, which is just and proper. Hence, prayed for dismissal of the Petition.

12. Needless to say that, Section 22 of the D.V. Act does not provide specific quantum of the compensation. The provisions of D.V. Act is in the nature of social, beneficial legislature to the aggrieved

persons who being subjected to domestic violence as defined under Section 3 of the D.V. Act. While considering the quantum of compensation, the social and economical status of the respective party is required to be taken into consideration.

13. In case in hand, it prima facie appears that the marriage between the Petitioner and Respondent No. 1 solemnized on 09.05.1999 as per the Hindu Customs and Rites at Jalgaon. The relationship of husband and wife is still in existence between the Petitioner and Respondent No.1. It is not in dispute that out of the matrimonial relations of the Petitioner and Respondent No. 1 is blessed child - Respondent No.2, who is pursuing study. The Petitioner is serving in the BSNL and drawing handsome salary. The Petitioner has not proved his salary certificate to ascertain how much salary being drawn by him.

14. In paragraph No. 16, the learned trial Court observed that in the year 2003 maintenance of Rs. 750/-p.m. granted to Respondent No.1 and Rs. 500/- p.m. was granted to Respondent No.2. However, under Section 18 of the Hindu Adoption and Maintenance Act, both the Respondents are receiving maintenance at the rate of Rs. 8,000/-p.m. and Rs. 7,000/- p.m., respectively. No doubt, Respondent No.1 claimed

compensation to the tune of Rs. 10,00,000/- under Section 22 of the D.V. Act, however, the learned trial Court considered the status of Respondents No. 1 and 2 as well as considering the educational expenses of the Respondent no. 2 and granted compensation to the tune of Rs. 2,00,000/-.

15. The learned Appellate Court passed the impugned order considering all the material available on record as well as the ratio laid down in the cases of *V Chandrashekhhar Vs. K. Bhavana @ V Bhavana 2015(3) Crimes 293 (A.P)*, and *Lucknow Development Authority Vs. M.K. Gupta AIR 1994 SC 787 SC* and held that the compensation granted by the trial Court to the tune of Rs. 2,00,000/- which is just and proper.

16. In case in hand, the Petitioner has not brought any special circumstances on record to show that the compensation granted by the learned trial Court to the tune of Rs. 2,00,000/- are exorbitant or illegal. However, the learned trial Court exercised its discretionary power and granted lump sum compensation of Rs. 2,00,000/-. Therefore, I do not find that the impugned order is perverse, illegal or bad in law and no grounds are set out to interfere with the said findings by exercising the rule in question under Article 227 read with Section

482 of the Code of Criminal Procedure. In view of above discussion, I am not inclined to interfere with the findings recorded both the courts below. Hence, the present Petition is dismissed. Accordingly, Rule is discharged.

(Y. G. KHOBRADE, J.)

shp