



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

CRIMINAL REVISION APPLICATION NO. 105 OF 2023

Dnyanoba s/o Narayan Engade
Age: 68 years, Occu.: Retired,
R/o. Shivaji Mahavidyalaya,
Parbhani, Tq. & Dist.Parbhani.

....Applicant
(Orig. Respondent)

Versus

Dropadabai w/o Dnyanoba Engade
Age: 64 years, Occu.: Household,
R/o. Konatha, Tq.Basmath,
Dist.Hingoli.

.....Respondent
(Orig. Applicant)

.....
Advocate for Applicant : Mr.Krishna Pratap Rodge
Advocate for Respondent : Mr.Shahaji B.Ghatol Patil
.....

CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 04 DECEMBER, 2024
PRONOUNCED ON : 13 DECEMBER, 2024**

ORDER :

1. In this revision, there is challenge to the Judgment and order dated 23-12-2022 passed by learned Additional Sessions Judge-4, Parbhani, confirming the order passed by learned Judicial Magistrate First Class (JMFC), Parbhani dated 07-10-2021 in Criminal Miscellaneous Application No.675 of 2013.

2. It is submitted that parties are almost senior citizens. That since last more than 35 years they are residing separately i.e. since 1985 which is prior to the enactment of Protection of Women from Domestic Violence Act 2005 (for short "PWDVA"). It is submitted that present respondent instituted PWDVA proceedings and specifically invoked provisions under Section 12 of PWDVA setting up several prayers including prayer for provision to reside. That learned JMFC, after hearing both the sides, was pleased to allow prayers directing costs of Rs.1,000/- and granting prayer for residence by directing present revisionist to make provisions for residence at Ward No.6, Parbhani. That said order was on account of incorrect appreciation and was in disregard to the settled legal position and was thereby challenged before the learned Additional Sessions Judge, Parbhani. That even First Appellate Court failed to consider separation for more than 35 years and that wife already residing with parents and already had shelter. That there was no need to invoke provisions under Sections 17, 18 and 19 of the PWDVA. That there is misuse of provisions of the PWDVA. Aspect of limitation is also not considered and adhered to by both the trial Court as well as First Appellate Court. For all above reasons, learned Counsel for applicant submits that interference in the revision is necessary.

3. Learned Counsel for respondent supported the orders passed by trial Court as well as First Appellate Court and prays to dismiss the revision.

4. After hearing submissions of both the sides and on going through the Judgment and order passed by the trial Court, it is emerging that there is no dispute that parties are husband and wife. There is also no dispute that they have separated way back in 1985 and proceedings under the PWDVA are instituted in the trial Court in 2013. Wife claims mal-treatment and being driven out of the house and hence, compelled to take shelter at her parents. This shows that parties have already separated. Now point is raised that PWDVA provisions are not attracted as the said enactment is of 2005. However, as pointed out by learned Counsel for respondent wife, it is pertinent to note that in the case of *Mohit Yadav and another v. State of U.P.*, 2010 ALL MR (Cri. LJ 111), the Hon'ble Apex Court has held that "*acts of violence occurred even prior to enactment would come within the meaning of 'domestic violence'*". Since beginning law is fairly settled that husband is statutorily bound to provide for maintenance and shelter of even separated wife.

Admittedly, in the present case relations as husband and wife have not come to an end and parties are merely separated.

5. Perused the order of trial Court as well as First Appellate Court. Learned trial Court has appreciated the evidence adduced by the parties, learned First Appellate Court has also re-appreciated and they have both arrived to a concurrent findings that wife is entitled for the relief. In revision, except advancing a case that wife is residing separately since 35 years and that she has residence at her parents' house, no legal point is made out to disturb the above findings. There is no merit in the revision. Accordingly, I proceed to pass following order :

ORDER

Criminal Revision Application No.105 of 2023
stands dismissed.

(ABHAY S. WAGHWASE)
JUDGE