



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

934. CRIMINAL WRIT PETITION NO. 627 OF 2023

**SUMIT LAXMAN KALOKHE
VERSUS
SWATI SUMIT KALOKHE AND OTHERS**

....

Mr. P. R. Jadhav, Advocate for the Petitioner
Mr. Rahul P. Cheble, Advocate (Appointed) for Respondent No. 1
Mr. N. D. Batule, APP for Respondent No. 7

....

CORAM : Y. G. KHOBRAGADE, J.

DATE : 23.10.2024

PER COURT :-

1. Learned Advocate for the Petitioner seeks leave to amend the cause title of the Petition, invoking Section 482 of the Code of Criminal Procedure with Article 227 of the Constitution of India.

2. Leave granted.

3. Rule. Rule made returnable forthwith. Heard Mr. Jadhav, the learned Advocate for the Petitioner and Mr. Rahul Cheble, learned Advocate, appointed by this Court for Respondent No. 1.

4. The Petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India r/w Section 482 of the Code of Criminal Procedure and challenged the judgment and order dated 27.01.2023 passed by learned Additional Sessions Judge, Ahmednagar in Criminal Appeal No. 50 of 2022 and Criminal Appeal No. 54 of 2022, arising out of the judgment and order dated 29.01.2022 passed by the learned J.M.F.C., Ahmednagar Court No.1, in Criminal Misc. Application No.69 of 2015.

5. The Petitioner is the original Non applicant No. 1 and the Respondent Nos. 1 and 2 are the original Applicants in Criminal Misc. Application No. 69 of 2015. For the sake of brevity, I would like to refer the parties to the present Petition in their original capacity.

6. The Applicant Nos. 1 & 2 have filed a proceeding bearing Criminal M.A. No. 69 of 2015 under Section 12 of the Protection of Women from Domestic Violence Act, alleging that, on 20.05.2023, her marriage (Applicant-wife) was solemnized with the Non Applicant No. 1 Sumit Laxman Kalokhe as per the customs and rights prevailing in their society. The said matrimonial relations are still in existence.

Out of said matrimonial relation, they blessed with a child namely Samarth i.e. Applicant No.2. According to the Applicant, her parents gifted Rs.1,00,000/- in cash and other valuables, including the domestic articles at the time of marriage. So also, her parents incurred approximately 8 to 9 lakh Rupees for solemnization of her marriage. After marriage, the Non- applicant No.1 treated her cordially for some days, however, subsequently, the Non-applicant doubted on her chastity and raised domestic violence against her. So also, the non-applicant No.1 tortured her for demand of dowry of rupees 3 lakh for construction of new house. On 16.11.2013, the non-applicant No.1 mercilessly beaten her and thrown her out of the house and gave her life threat. Therefore, on the next day, to save her life, she visited at Mohta Devi and then visited at Dhamangaon, where, her brother came and brought her at her parental house. According to the Applicant, the Non applicant No. 1 is employed as a Civil Engineer with Nagar Parishad, and he is drawing a salary of Rs.50,000/- per month. Therefore, she prayed for monthly maintenance of Rs. 15,000/- for herself, Rs. 10,000/- for minor child, Rs. 3,000/- toward house rent and Rs. 10,00,000/- toward compensation.

7. The Non applicants appeared in the matter and filed their reply at Exh. 10. The Non-Applicants denied all adverse allegations made against them. According to the Non-applicant No. 1 he never raised domestic violence against the Non-applicant No. 1. However, on 17.11.2013 at 4.54. a.m. the Applicant went to washroom, but Applicant No. 1 did not return to the house thereafter, he lodged a missing report of Applicant No.1, but in fact Applicant No. 1 left his house at her will and took valuable ornaments from the cupboard. Since, the Applicant left his company at her own will, therefore, he is not entitled to pay any maintenance. So also, he is hardly earning Rs. 7,000/- to 8,000/- per month.

8. In order to prove the claim, the Applicant filed evidence affidavit at Exh.17 and undergone cross-examination. The Applicant examined her father at Exh.39. Though, the Non-applicants filed Written Statement at Exh.10, but they failed to lead oral evidence.

9. On 29.01.2022, the learned trial Court passed the judgment and order holding that though, the non applicant doubted about chastity of the Non-applicant No. 1 and alleged that she was having extra marital affairs prior to the marriage with one

Mohammad Sayyad, however, the Non-applicant failed to prove said allegations. On the contrary, the Applicant proved that the Non-applicant raised the demand of dowry of 3 lakh Rupees for construction of new house and subjected her to domestic violence. Further, On 16.11.2023, the Non-applicant No.1 mercilessly beaten the Applicant No. 1 on suspicion of her character. Therefore, on the next day i.e. on 17.11.2013, to save her life and child after giving intimation to the Non-applicant No.5, she visited at village Mohtadevi and then visited at her parental house with her child.

10. The Applicant sought protection, maintenance and compensation to the tune of Rs. 10,00,000/-. However, the learned trial Court only granted maintenance to the tune of Rs. 10,000/- each for both the applicants with effect from the date of order i.e. 29.01.2022.

11. Being aggrieved by the said judgment and order, the Applicant wife and her minor child preferred Criminal Appeal No. 54 of 2022. The Non-applicant husband also preferred Criminal Appeal No. 50 of 2022, challenging the judgment and order dated 29.01.2022. On 27.01.2023, the learned Appellate Court passed the

impugned judgment and order holding that, the Applicant was subjected to domestic violence at the hands of the Non-applicant on suspicion of extra marital affairs with some one else. So also, on 17.11.2013, the applicant left her matrimonial house to save her life as well as the life of her son. Not only this, but the Non-applicant raised cruelty against her for the demand of dowry of 3 lakh Rupees for construction of new house. The learned Appellate Court further held that the Non-applicant is working with Nagar Parishad, as a Engineer and drawing the salary to the tune Rs. 50,000/- to 55,000/- per month. The Non-applicant No.1 filed affidavit of assets and liabilities disclosing that he is receiving monthly income of Rs.42,766/-.

12. Needless to say that, now the Petitioner/original Non-applicant No. 1 drawing salary as per the seventh pay commission recommendations. Therefore, it can be presumed that as on today the Petitioner/Non applicant No. 1 is drawing the salary of more than Rs. 75,000/- per month. However, the learned trial Court granted only Rs. 10,000/- per month, each, towards maintenance to the Applicant Nos. 1 and 2, but no compensation was granted to them. On 27.01.2023, the learned appellate Court passed the impugned order

and modified the judgment and order passed by the learned trial Court holding that, the original Applicant No. 2 (minor) is entitled to receive Rs. 7,000/- p.m. towards maintenance, however, quantum of maintenance granted in favour of the Applicant No. 1 was maintained as it is. In addition compensation of Rs.5,00,000/- awarded.

13. The learned Advocate for the Petitioner canvassed that the Non Applicant No. 1 not produced any evidence to show any damage caused to her or she sustained any injury. Therefore, in absence of such evidence, the learned appellate Court ought not to have granted compensation. Therefore, prayed to quash and set aside impugned judgment.

14. Section 22 of the Protection of Women from Domestic Violence Act, provides as under:-

“22. Compensation orders. - In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.”

15. Since, the Applicant proved the domestic violence raised against her at the hands of her husband/Non applicant No. 1, she was mercilessly beaten up by doubting on her chastity as well as raising the demand of 3 lakh Rupees for construction of house. Therefore, as per the provision of Section 22, if Applicant No.1 was subjected to cruelty and domestic violence merely doubting her chastity. Therefore, said act on part of the Non-applicant No. 1 certainly falls within the ambit of domestic violence as defined under Section 3 of the Act, due to which the Applicant obviously suffered mental torture and emotionally distressed, for which, no any documentary evidence is required.

16. Needless to say that, on 29-01-2022, the trial Court passed the Judgment & order and granted maintenance from the date of order. However, the learned Appellate Court modified said judgment & order and directed the Non-applicant to pay the maintenance to the applicant from the date of Application, which is unjustifiable.

17. Since, the Non-Applicant-wife is residing at her parental house at the mercy of her parents, therefore, she certainly

entitled for the maintenance, rent as well as compensation which was determined under the impugned order. Therefore, I do not find any substantial grounds to interfere with said findings. Accordingly, **the Writ Petition is dismissed.** Rule discharged.

18. Since, Mr. Rahul P. Cheble, the learned Advocate appointed for Respondent No. 1 by this Court to defend the cause on behalf of the Applicant and her minor child, therefore, Rs. 10,000/- is hereby quantified toward legal fees of the counsel.

[Y. G. KHOBRAGADE, J.]

SMS