

Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1981 OF 2016

Gita @ Meena Ganesh Raokhande

...Petitioner

Versus

Ganesh Muralidhar Raokhande & Ors

...Respondents

Adv. Poonam Pal i/b Adv. Sachin Hande for the Petitioner.

Adv. Shilpa Gajare, APP for the Respondent/State.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : FEBRUARY 21, 2024

P. C. :

1. Heard.

2. By this Petition challenge is to the judgment dated 31st March, 2016 passed by the Appellate Court in Criminal Appeal No. 97 of 2012 arising out of the judgment dated 6th February, 2012 passed by the JMFC, Sangli in Criminal Misc. Application No. 6 of 2010 dismissing the Application.

3. Criminal Misc. Application No. 6 of 2010. was filed by the Petitioner under Section 12 of the Protection of Women From Domestic Violence Act, 2005, (D.V. Act). The case of the Petitioner was that, the parties were married on 11th March, 2008 and within a period of two months after marriage the Petitioner conceived. It was pleaded that the

Respondents started ill-treating the Petitioner and were insisting on aborting the child which demand was refused by the Petitioner. It is pleaded that the Respondent No. 1 husband was not providing the day to day necessities to the Applicant and as such, it was difficult for the Petitioner to have two square meals. It was pleaded that on 28th January, 2009 the Petitioner went to her parents house for delivery and after the birth of the minor daughter the Respondent No. 1 husband did not visit the Petitioner. It was pleaded that Petitioner along with her mother went to the house of the Respondent No. 1 which was a rented premises in Uttam Nagar Pune where the door was locked and on enquiry she came to know that her husband was in Bombay and with help of the landlord she opened the door and resided there after a period of four days. It is pleaded that on 30th November, 2009, Respondent No. 1 came to the rented room and asked her to go and reside at Karad as he wanted to vacate the rented room and on the same day, the Respondent No. 1 with all the household articles went to Karad leaving behind the Petitioner and her child at Pune. It is further pleaded that on 1st December, 2009, Respondent No. 1 came to the rented house at Pune to ascertain whether the Petitioner has left the house and on finding her there, he tried to pour kerosene on the Petitioner and tried to set her on fire, however, the Petitioner saved herself and went to the Police station to lodge the

complaint. It was pleaded that Respondent No. 1 husband also came to the Police station and his instance, the complaint was not registered by the Police. It was pleaded that the Petitioner returned to her parents house. It was pleaded in the Application that the Respondent No. 1 is serving in a private company and getting a salary Rs. 15,000/- per month and in addition rental income of Rs. 5,000/- per month. As such, necessary reliefs under Section 18, 19, 20 and 22 of the D. V. Act was sought by the Petitioner.

4. The Application came to be resisted by the Respondent No. 1. It was contended that the Petitioner was earlier married to one Sunil Devidas Shinde. It was pleaded that the Petitioner was accused of murder of uncle of her husband. However the said fact was not disclosed by the Petitioner at the time of the marriage. It was further contended that by notice dated 9th December, 2009 the Respondent No. 1 called upon the Petitioner for cohabitation. It was contended that the house at Karad belongs to the joint family and presently the Respondent No. 1 is unemployed.

5. The parties went to trial and the Trial Court upon consideration of the oral evidence held that vital admissions are made in the cross-examination as regards her case that she was not supplied food material and day to day necessities by her husband. The Trial Court also held that

the Petitioner has made false allegations about not taking care of the Petitioner during her pregnancy and on the basis of evidence, the Trial Court rejected the Application. As against which Criminal Appeal No. 97 of 2012 was filed under Section 29 of the D. V. Act, before the Sessions Court. The Appellate Court re-appreciated the evidence and upheld the findings of the Trial Court and as such dismissed the Appeal.

6. Heard Ms. Poonam Pal, learned counsel for the Petitioner.

7. Learned counsel for the Petitioner would submit that the evidence has not been properly appreciated by the Trial Court as well as the Appellate Court. She would submit that the accusation as regards the murder of uncle of the first husband was given unnecessary weightage without noticing that she has been acquitted in the said proceedings. She would submit that the Trial court well as the Appellate Court had failed to notice that there was a child begotten of the said marriage and the maintenance ought to have been granted. She would further submit that the evidence on record would demonstrate that the Respondent No. 1 has ill-treated the Petitioner.

8. Considered the submission and perused the record of the Trial Court as well as the Appellate Court.

9. The Application under section 12 of the Domestic Violence Act

has been filed by the Petitioner claiming various reliefs under Section 18, 19, 20 and 22 of the Domestic Violence Act. For the purpose of claiming the relief under D. V. Act, the *sine qua non* is domestic violence on part of the Respondents. In the present case, the allegations are that the day to day necessities were not being provided by the Respondent No. 1. and there was ill-treatment and demand for abortion. The other allegation is that, after the birth of the child, the husband did not come to see her and her child and on 1st December, 2009 when she went to the rented premises where the Respondent No. 1 was residing, he tried to pour kerosene upon her and set her on fire.

10. The Trial Court as well as the Appellate Court has considered the vital admissions of the Petitioner that when she was residing with her husband her husband used to supply the gas cylinder etc. to her for cooking the food and also she never went to grocery shop for purchasing food grains and it was the Respondent No. 1-husband who was doing all these activities. On the basis of evidence, the allegations of the Petitioner that day to day necessities have not been supplied have been held to be contradictory to the pleadings. The admissions in the cross-examination was that during her pregnancy, she was taking medical treatment at hospital Dhankawadi Pune and also that as per the rituals and customs she had gone to her parents house for delivery. She has further admitted

that after delivery her husband and his sister came to see her and had brought gold finger ring gift and clothes for newly born child. She has also admitted that after a delivery she was taken to the hospital for medical treatment and in the year 2009, during the Ganapati festival she has gone to Karad which is the parental house of the Respondent No. 1. Considering the vital admissions which have come on record, the Trial Court and the Appellate Court held that no case of Domestic Violence has made out. Nothing has been demonstrated before this Court to show any perversity in the findings. The allegations of the Domestic Violence is not substantiated by leading evidence by the Petitioner. Considering the material on record, there is no infirmity in the findings of the Trial Court and the Appellate Court.

11. The submission of learned counsel for the Petitioner is that charge for the murder of uncle of her husband was taken into consideration is not sustainable. Upon perusal of the impugned judgments, the Trial Court as well as the Appellate Court has considered the evidence and the vital admissions given by the Petitioner and on the basis of the evidence which has come on record has held that the Petitioner has failed to prove Domestic Violence. The Appeal has not been dismissed for the reason that the Petitioner was accused for the murder of her prior husband's uncle.

12. The submission of learned counsel for the Petitioner is that, there is a daughter which is born of the said marriage and no provisions has been made for her maintenance. As noted above, domestic violence is *sine qua non* for grant of relief under the Domestic Violence Act. In the present case, the Petitioner has failed to establish her case of domestic violence. However, dismissal of the D. V. proceedings would not mean that the Petitioner and the daughter are left remedy-less and it is open for them to pursue other remedies for claiming maintenance and other reliefs under the other statutes such as under Section 125 of Cr.PC. or Section 18 of Hindu Adoption and Maintenance Act etc. What is only being considered in the present case the validity of orders passed under the Domestic Violence has been established.

13. As no case of domestic violence was made out, the Application has come to be dismissed.

14. In light of the above, there is no merit in the Petition. Petition stands dismissed.

(SHARMILA U. DESHMUKH, J.)