

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.514 OF 2019

Ashok Sunderjibhai Jadhav

...Petitioner

V/s.

Madhu Ashok Jadhav and Anr.

...Respondents

Mr. Ramesh Jadhav for the Petitioner.

Mr. Deepak Kasbe i/b Mr. Ashish Sawant for Respondent No.1.

CORAM : SHARMILA U. DESHMUKH, J.

RESERVED ON : 2nd FEBRUARY 2024.

PRONOUNCED ON : 27th FEBRUARY 2024.

ORDER :-

1. By this petition filed under Article 227 of the Constitution of India the petitioner seeks to question the impugned Judgment dated 28th November 2018 passed by the Appellate Court in Criminal Appeal No 639 of 2014 arising out of judgment dated 13th May 2014 passed by the Metropolitan Magistrate in CC No.7/DV/2007.

2. The facts of the case are that an application was filed on 29th November 2007 under Section 12 of the Protection of Women from Domestic Violence Act 2005 (DV Act) seeking reliefs under Sections 18, 19, 20 and 22 of the DV Act. The Application came to be resisted by the

petitioner denying the allegations in the Application.

3. Parties led evidence and *vide* judgment dated 13th May 2014 the Application came to be partly allowed by the Trial Court as under:

I) The application is partly allowed.

II) The respondent is restrained by the Protection Order from subjecting the applicant to any acts of domestic violence either by himself or by his sons, relatives, agents servants etc. in any manner.

III) The applicant shall be entitled to access to the properties bearing no. TF/92, Rajlaxmi, Old Praksh Cinema premises, Gheekanta, Ahmadabad, SF7 and SF8, Siddhi Vinayak Comm. Estate, Sukhram Nagar, Ahmadabad and 26th January Apartment near L. G. hospital, Canara bank, Mani Nagar, Ahmadabad and the respondent is restrained from obstructing the applicant in her access to the said property either by himself or through his relatives, agents, servants etc. and he is further restrained from alienating, mortgaging the said properties or from creating any encumbrances thereupon without the consent of the applicant.

IV) The respondent shall pay the applicant an amount of Rs.5,000/- per month from date of filing of this application till March 2008 and thereafter at the rate of Rs.7,500/- from April 2008 to March 2013 and thereafter at the rate of Rs.15,000/- per month from April 2013 onwards.

V) The respondent shall pay the applicant an amount of 2,50,000/ as compensation within the period of 3 months from

the date of this order.

VI) The respondent shall pay the applicant an amount of Rs.2,500/- per month towards the alternate residential accommodation from the date of filing of this application till March 2008 and thereafter at the rate of Rs. 5,000/- p. m. from April 2008 to March 2013 and thereafter at the rate of Rs. 10,000/- per month from April 2013 onwards.

VII) Copies of this order be supplied to the parties to the proceedings free of costs.

VIII) Copy of this order shall be forwarded to Protection Officer concerned and to the Incharge of concerned Police Station at Mumbai and Ahmadabad so as to ensure the effective implementation of the order and to report the same to this court.”

4. As against the judgment of the Metropolitan Magistrate, the petitioner preferred Criminal Appeal No.639/2014 under Section 29 of the DV Act. The said Appeal came to be dismissed by the Sessions Judge by judgment dated 28th November 2018.

5. Heard Mr. Ramesh Jadhav for the petitioner and Mr. Deepak Kasbe for respondent No.1.

6. Mr. Jadhav, learned counsel appearing for the petitioner would submit that in the Application filed under Section 12 of D.V. there are no

specific prayers made even as regards the payment of the monetary reliefs and in absence of any specific amount being claimed, no relief of grant of maintenance or compensation could have been granted. He submits that the allegation of the respondent was that the petitioner received monthly income of Rs.50,000/- from the business of M/s.Madhu Kids and Rs.25,000/- as salary from the Supreme Exclusive Private Limited and Rs.5,000/- from the rent of three shops at Ahmedabad. Pointing out the income tax returns as partner of M/s. Madhu Kids, he would contend that the yearly income was Rs.92,840/- He submits that the Trial Court has taken into consideration that there are several properties standing in the name of petitioner and his son and has granted a sum of Rs.15,000/- by considering rise in price index and standard of living as the income tax return was of the year 2011-2012. He would submit that considering the facts of the case, the finding of Appellate Court of economic abuse is unsustainable. He submits that the grant of compensation of Rs.2,50,000/- has been upheld by the Appellate Court without any finding in that regard. He further submits that it was his specific case in the appeal that there was no income proof produced by the respondent and on the basis of one shop run by son of the petitioner it is presumed by the Court that the entire income from the shop goes to the Petitioner. He would further submit that in the cross examination the respondent has admitted that she refused to

cohabit with the petitioner even after filing of the petition for restitution of conjugal rights as petitioner had not handed over the property documents which are standing in her name. Pointing out to the evidence of petitioner, he submits that the petitioner has deposed that his yearly earning is Rs One lakh. He submits that there is specific denial that his monthly income is of Rs.1,81,000/-. He would further submit that provisions of Section 12 of the DV Act necessitates Magistrate to consider the domestic incident report produced by the Protection Officer which requirement is not satisfied.

7. *Per contra*, Mr. Kasbe, learned counsel appearing for the respondent wife submits that the Metropolitan Magistrate has considered the admission of the petitioner about visiting the respondent's residence along with his son and that crime was registered against him for having assaulted the respondent on that date. He submits that the Trial Court has come to a finding that two properties bearing No. SF7 and SF8 are standing in the name of the respondent, which are occupied by the petitioner. He submits that as such clear case of economic abuse is made out. He would further submit that the Trial Court has observed that the respondent is justified in not resuming co-habitation as dispute has arisen on the ground of aspersion cast on her character and the fact that petitioner was not handing over title deeds standing in the name of respondent. As

regards the income he submits that the petitioner has not examined any witness to prove the salary payment by vouchers from Supreme Exclusive Private Limited. He submits that the Trial Court has specifically observed that petitioner has made attempt to conceal his income and as such Trial Court has held that the petitioner was having sufficient earning from his private job and garment business. He submits that the Trial Court has rightly considered that income might have gradually increased since the year 2006-07 which showed his income of Rs.2,04,415/- and as such has granted the maintenance. He submits that the Appellate Court has dismissed the appeal with cost of Rs.5,000/-, which has not been paid.

8. Considered the submissions and perused the record.
9. The allegations in the application filed by the respondent wife can be summarized as under:
 - a) Relationship with another woman.
 - b) Not providing for maintenance.
 - c) Pressurizing to sell the bungalow standing in her name and assault upon refusal.
 - d) Assault in the year 2006 and driving her out of the matrimonial house.

- e) Attempt to strangle on 19th May 2007.
- f) Driven out of matrimonial house again on 20th May 2008.
- g) Abuse and assault on 13th August 2007 at the respondent's brother's house at Mumbai.
- h) Abuse and threats on 6th September 2007 at the matrimonial house.

10. In support of her submission she has examined herself as well as her brother and sister whereas the petitioner examined himself. The documentary evidence produced on record by the respondent are the matrimonial proceedings and the complaint lodged by the Applicant with police, whereas the petitioner produced Deed of dissolution of partnership firm of M/s.Madhu Kids, medical reports, bills, legal notices and police complaints.

11. Before this Court there was no issue raised as regards the legality of marriage which was submission before the Trial Court. The two issues raised was that the allegations do not make out any case of economic abuse and secondly that the quantum of maintenance and compensation granted is excessive. The Trial Court on the basis of evidence on record had held that the respondent has proved acts of domestic violence under mental

abuse, economic abuse and physical abuse. The Appellate Court has reversed the finding of physical abuse and has held that there is economic abuse. There is no challenge by the respondent wife and the issue firstly for consideration is whether the facts constitute case of economic abuse. The definition of domestic violence under Section 3 of the DV Act is an expansive definition and takes within its fold not only physical or verbal abuse but also an economic abuse and reads thus:

“For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it--

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.--For the purposes of this section,--

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or

health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes--

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested;

(iv) "economic abuse" includes--

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.--For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration."

12. Plain reading of "economic abuse" as defined under Section 3 of D.V Act would indicate that it is an inclusive definition which includes deprivation of all resources including economic and financial resources to which the aggrieved person is entitled including and not limited to property jointly or separately owned by the aggrieved person, alienation of assets in which the aggrieved person has an interest or is entitled to use as also prohibition or restriction to continued access to resources to which the aggrieved person is entitled to use or enjoy by virtue of her domestic relationship.

13. In the present case, it has come on record that the business of M/s. Madhu Kids was started in the name of the respondent at 92, Rajlaxmi, Gheekanta, Ahmedabad and admittedly the respondent has been excluded

from the business of M/s.Madhu Kids which is now being looked after by the son of the petitioner from his prior marriage. The Trial Court has held that the bungalow at Swagat Housing Society, 16th Road, Ahmedabad had been purchased jointly in the name of the petitioner and the Respondent which bungalow was thereafter sold and a flat at 26th January Avenue, LG corner, Policy chowky, Ahmedabad and two shops bearing Nos.SF7 and SF8 at Siddhi Vinayak Comm. Estate, Sukhram Nagar, Ahmedabad were purchased. There is documentary evidence to show that the tenement at TF 92 Gheekanta, Ahmedabad from where the business of M/s.Madhu Kids is conducted is standing in name of the respondent and Rajlaxmi Development Pvt Ltd, properties bearing SF7 and SF8 Siddhi Vinayak Commercial Estate are standing in the name of the respondent and occupied by the petitioner or his son from previous marriage which clearly shows that she has been deprived of the right to use the property to which she is entitled under law being the joint owner of the property. It is not disputed that the Respondent has been deprived of the right to use the properties standing in her name and it is also not disputed that the petitioner has not made any provision for the maintenance of the respondent. According to the learned Counsel for the Petitioner, only the acts which are noted in Form I to The Protection of Women from Domestic Violence Rules, 2006 would constitute economic abuse. Form I is the prescribed format for preparation

of domestic incident report by the Protection Officer. The acts of economic abuse cannot be confined to the acts prescribed in the format. Pertinently, the last item in Form I is any other economic violence, which is indicative of the fact that the acts specified therein are not exhaustive. In any event, the Rules framed under the Act cannot override the provisions of the Act. Considering the evidence on record, the Appellate Court has rightly come to finding of economic abuse.

14. As regards the contention that there was no domestic incident report of Protection Officer, the Apex Court in case of *Prabha Tyagi vs. Kamlesh Devi, (2022) 8 SCC 90* has held that in case of application filed by the aggrieved person by herself or with assistance of an advocate, there would be no domestic incident report received by the Magistrate from Protection Officer.

15. As regards the submission that the prayers in the application are vague and does not specify the quantum of maintenance and compensation claimed, the avowed object of the Act is to provide for more effective protection of the rights of women who are victims of violence of any kind occurring within the family and for connected and incidental matters. The strict rules of pleadings cannot be made applicable to D.V. Act which is a

beneficial legislation. Further Rule 6 of the D.V Rules provide that the application under Section 12 shall be in Form II or as nearly as possible thereto. In case of illiterate aggrieved person, the assistance of Protection officer can be sought for preparing her application and forwarding the same to the concerned Magistrate. In the present case although the amount claimed as monetary relief has not been specifically quantified in the prayer clause, sufficient evidence has been led by the respondent to establish the income of the Respondent. In my view, the non mentioning of the quantum of monetary relief in the prayer clause cannot prove fatal to the case of aggrieved person.

16. Now coming to the quantum of monthly maintenance granted, the Trial Court has considered that the petitioner has not disclosed his income in the pleadings or in the evidence. As regards the vouchers of payment from Supreme Exclusive Pvt Ltd as salary received, the Trial Court has held that the petitioner has not examined any witness from Supreme Exclusive Pvt Ltd to prove the vouchers or factum of his termination and disregarded the vouchers as the same was signed by the petitioner himself. As regards the Income Tax Returns filed by the petitioner, the Trial Court has considered the returns of the petitioner for the year 2006-07 which showed his gross total income at Rs. 2,04,415/-. As regards the returns of

the year 2011-2012 showing yearly income of Rs 92,840/, the Trial Court held that the returns shows that the petitioner is partner of M/s. Madhu Kids and is receiving income from his share which shows that he has sufficient source of income and observed that the petitioner has made attempts to hide his actual income.

17. In so far as the Deed of Dissolution of M/s.Madhu Kids produced by the petitioner, the Trial Court observed that the partnership business of M/s.Madhu Kids was started in the name of respondent and in order to deprive the applicant from income of business thereof, the deed of dissolution was executed by petitioner. The Trial Court further held that the petitioner has not brought on record the accounts of the said firm to show the income received from the said firm and how the same is being received presently.

18. The petitioner has come with a case that his private employment with Supreme Exclusive Private Limited was terminated and the Income Tax Returns for the year 2011-12 showed yearly income at Rs 92,840/. And by virtue of Deed of Dissolution of the year 2013, he is no longer the partner in M/s Madhu Kids which is now being run by his son from prior marriage. The evidence indicates that no witness from Supreme

Exclusive Pvt Ltd was examined to prove the termination of services. As regards the Income Tax Returns for the year 2011-12 showing yearly income of Rs 92,840/ it is matter of common knowledge that in case of business, the Income Tax Returns cannot be construed as correct indicator of the income of the partners. That apart, there was additional income in the form of rent from the tenanted properties. As the income was within the personal knowledge of the petitioner, it was incumbent upon him to produce necessary documents to prove that his actual monthly income. In the year 2006-2007, the income is shown to Rs 2,04,415/ in addition to income from private employment. The D.V application has been filed in the year 2007 and subsequently it is sought to be pleaded that the petitioner's services with Supreme Exclusive Pvt Ltd has been terminated and the income from M/s. Madhu Kids is reduced. However the fact remains that he has not examined any witness to establish his salary as also the factum of termination. From the evidence, it can be presumed that the petitioner was having income from the business of M/s. Madhu Kids and also monthly income as employee of Supreme Exclusive Private Limited. In the examination in chief the petitioner has deposed that he earns less than Rs 1,00,000/ per annum. In the cross examination he has admitted the purchase of various properties.

19. On the basis of the evidence on record, the Trial Court has considered the various properties standing in the name and occupation of the petitioner and his sons as well as copy of income tax returns for the year 2011-2012 which showed the petitioner as partner of M/s.Madhu Kids and his total income at Rs.92,840/-. The Trial Court considered that the respondent has right, title and interest in the properties standing in her name at Ahmedabad which properties are either let out on rent or occupied by petitioner for business. The Trial Court held that the Income Tax return for the year 2006-2007 show an approximate income of Rs.2,04,415/ and considering the dependency of three children has granted maintenance of Rs.5,000/- from the year 2007-2008. The Trial Court considered that in the year 2008-2009 the sons of petitioner was shown to have acquired their respective properties and as such increased the maintenance to Rs.7,500/- p.m. from 2008-2013 and has thereafter has increased it to Rs.15,000/- p.m. from the year 2013-2014 and also house rent of Rs.10,000/-. The Trial Court considered the mental agony and negligence and has granted compensation of the sum of Rs.2,50,000/- as well as protection orders.

20. Much emphasis is sought to be laid on the Income Tax Returns for the year 2011-12 which showed a yearly income of Rs 92,840/ from M/s.Madhu Kids. At the same time it needs to be noticed that in the year

2006-2007 the income tax returns showed yearly income of Rs 2,04,415/. The business of M/s.Madhu Kids was being run by the petitioner and his son and by Deed of Dissolution the partnership has been dissolved as on 1st April, 2013. There is no document on record to show the amount received by the petitioner upon dissolution from the partnership firm. It is also not the case of the petitioner that there is any dispute between the petitioner and his son. It is thus evident that the dissolution of the partnership is on paper only to frustrate the claim of maintenance of the respondent. As there was no witness produced to substantiate that the petitioner has been dismissed from the services of Supreme Exclusive Pvt Ltd, the Trial Court has rightly considered the assets of the family as well as the income from private job and garment business. While granting maintenance, the Trial Court has considered the income tax returns for the year 2005-2006, 2006-2007 and considering the dependency of three children have granted Rs 3,000/ per month, for the period from 2007-2008 at Rs 5,000/. As the properties were acquired in the year 2008-2009 by the sons of the petitioner, the maintenance has been enhanced to Rs 7,500/ per month for period from 2008-till 2013 and thereafter considering the inflation at Rs 15,000/ per month.

21. The income reflected in the Income tax return cannot be taken

as clear indicator of the income received from the business as it is well known that rarely true income is disclosed in the income tax return. In addition to that there is no salary slip which has been produced on record by the petitioner to indicate the monthly salary that he was receiving from M/s. Supreme Exclusive Private Limited. As such the burden fell upon the Trial Court to consider his income by taking into consideration the other material in the form of the various properties which was standing in the name of the family to arrive at the petitioner's income. In my view, taking into consideration the evidence on record, the order of the Trial Court does not suffer from any infirmity.

22. The contention of learned counsel appearing for the Petitioner husband is that sum of Rs.2,50,000/- granted as compensation was also assailed before the Appellate Court by pointing out the appeal memo however the judgment of Appellate Court records that that no arguments were raised regarding the income of the husband and awarding of compensation of Rs.2,50,000/- and other monetary reliefs. Judicial note can be taken of the fact that even though each and every finding of the Trial Court is assailed in the appeal memo, the same may not be argued before the Appellate Court. It was open for the petitioner husband to approach the Appellate Court and point out that the said issue was argued but not

considered. Pertinently, in the present Petition also , there is no ground taken that the arguments on income of the petitioner husband and quantum of compensation was raised but not considered.

23. Despite thereof I have considered the issue of grant of compensation of Rs.2,50,000/-. The marriage of the parties has taken place in the year 1992 and in the year 2007 on the allegation of physical assault as well as forcible dispossession, the respondent has been residing separately since the year 2007. Admittedly there are immovable properties standing in her name and she has been deprived from the use of the properties since the year 2007. Admittedly there is no provision made for her maintenance during all these years. Considering the mental agony as well as the long drawn litigation between the parties, it cannot be said that sum of Rs.2,50,000/- awarded as compensation is excessive compensation.

24. Learned Counsel for the petitioner husband would lay the blame on the respondent wife by pointing out the admission in the evidence of the respondent that since the petitioner had not handed over the documents of the properties she had refused to resume co-habitation. Considering the fact that although the properties were standing in her name neither the title documents were handed over to her nor was she in physical

possession of the property, her apprehension that resuming cohabitation would result in her being deprived of her legitimate right over the properties particularly considering the allegations that threats were being made to sign the documents regarding the sale of the property, she was justified in refusing cohabitation unless the documents of title of the properties was handed over. The Trial Court as well as the Appellate Court has rightly appreciated the evidence on record.

25. Mr. Jadhav, learned counsel for the petitioner has relied upon the decision in the case of ***Koushik Anil Gharami vs. Samgeeta Koushik Gharami and Ors., Criminal Writ Petition No.32/2014*** (Nagpur Bench). in support of the proposition that order under Section 20 of the DV Act pertaining to grant of monetary relief is available when the aggrieved person establishes that she has to meet the expenses incurred and losses suffering through domestic violence on part of the respondent and if domestic violence is not proved no relief can be granted. In that case the domestic violence was not proved. The facts of the present case are clearly distinguishable inasmuch as the Trial Court as well as the Appellate Court have come to a finding of economic abuse. As such the decision does not assist the case of the petitioner.

26. Having regard to the discussion above, the Petition is devoid of merits and stands dismissed.

(SHARMILA U. DESHMUKH, J.)