

Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1152 OF 2022

Ganesh Sadashiv Khalipe & Ors.

...Petitioners

Versus

Sumitra Ganesh Khalipe & Anr.

...Respondents

Adv. Aseem Naphde & Adv. Saurish Shetye i/b Aarti Kalekar, Prem Kumar Pandey, Pavan Kumar Pandey for the Petitioner.

Mr. Pradep Chavan, Shweta Borhade, Adesh Kachare & Aishwarya Parab for the Respondent.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : JANUARY 4, 2024

P. C. :

1. Heard.

2. By this Petition, the challenge is to the order dated 15th February, 2022 passed by the Sessions Court under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (D.V. Act) in Criminal Appeal No. 332 of 2019.

3. The Appeal arose out of order dated 14th March, 2019 passed by the Metropolitan Magistrate rejecting the Respondent's Application seeking interim maintenance at the rate of Rs. 25,000/- per month, Residence order and in the alternative rent for the residence. The Trial Court noted that the Respondent is employed gainfully and she is earning Rs. 17,000/-

per month and that the Petitioner is employed with Cruise Carnival, Florida, U.S.A. and earning around Rs. 4,00,000/- per month. The Trial Court observed that the Respondent had raised various allegations as regards the physical, mental and economic abuse and narrated all incidents since 2012 to 2015 and on the other hand the Petitioner had made several allegation and denied every allegation made by the Respondent. The Trial Court on the basis of material on record came to a conclusion that unless evidence is recorded, it is not possible to ascertain as to whether the Respondent has really suffered from domestic violence. While doing so, the Trial Court took into consideration the emails which was exchanged between the parties and held that the story of the Petitioner is more probable. The Trial Court observed that the Petitioner requested the Respondent to join the matrimonial house and that the relief of maintenance cannot be granted unless there is a finding of *prima facie* case of domestic violence and rejected the application.

4. As against the rejection, appeal was filed before the Sessions Court which allowed the application and directed the Petitioner to pay maintenance of Rs. 20,000/- per month as also rent of Rs. 10,000/- per month. The Sessions Court considered the same emails which were referred to by the Trial Court and held that the emails show emotional abuse on part of the Petitioner which is a domestic violence. The Sessions

Court also considered that there is nothing on record to show that since the Respondent therein was staying separately, the Petitioner husband had ever attempted to maintain the Respondent or take care of her residence and as such, held that the same was an economic abuse which was covered under the domestic violence under the D. V. Act.

5. Mr. Naphde, learned counsel for the Petitioner submits that on the basis of the emails, the Trial Court had come to a finding that the evidence is required to be led and prima facie, there is no case of domestic violence and has thus, exercised discretion in favour of the Petitioner which discretion could not have been interfered with by the Session Court. He would further submit that as regards economic abuse, the emails itself indicate that he requested the Respondent to join his company in the matrimonial house for a period of almost 14 months and that being so there could not be an economic abuse as defined under clause (iv) of Explanation I to Section 3 of D. V. Act. According to him, the Respondent had left the matrimonial house in around September, 2015 and thereafter there was a continuous request on part of the Petitioner to resume cohabitation and as such, it cannot be said that there is any deprivation. He would submit that the Petition for divorce came to be filed in the year 2017, after a period of almost 14 months. He would further submit that on preponderance of probabilities, no case of domestic

violence is made out from the application as all the allegations made therein are against the in-laws of the Respondent. He has taken this Court to the pleadings in the application so substantiate the case that whenever there was any dispute between the parties, it was the Petitioner who had supported the Respondent. He submits that in the pleadings there are two incidences mentioned of September, 2015 and November, 2015, however, in the police complaints filed by the Respondent, these incidences do not find place. He submits that all this indicates that evidence is required to be led and as such, at the interim stage without *prima facie* case of domestic violence made out, interim relief granted by the Appellate court is unsustainable.

6. *Per contra*, Mr. Chavan, learned counsel for the Respondent submits that the application under the provisions of D.V. Act, pleaded a case of emotional abuse as well as economic abuse. He would submit that it is specifically pleaded in paragraph No. 30 of the application that she was forced to leave her matrimonial home abruptly in November, 2015 and all her belonging are lying in the matrimonial house. He would further submit that as regards the submission that, for a period of almost 14 months, the Petitioner was requesting the Respondent to resume cohabitation with him does not find place in the pleadings. Pointing out to the order of the Trial Court, he would submit that the Trial court did

not take into consideration the case of the Respondent as regards the economic abuse and has only given a finding in respect of the emotional abuse which was perverse and has been corrected by the Appellate Court. He would further submit that the Petitioner has suppressed vital information as regards his income by referring to the Affidavit of assets and expenditure filed before the Sessions Court. He would submit that the Petitioner has stated in the affidavit that he is unemployed, whereas the factual position is that, he has working on the ship cant be unemployed. He submits that in support of the Affidavit of disclosure, no documents were submitted which are mandatory such as the bank passbook which would have indicated the income of the Petitioner. He also submits that even if it is taken that the Respondent is earning sum of Rs. 20,000/- per month, considering the salary of the Petitioner, which in the month of April 2022 was about 4,052 dollars, there was disparity, and the Respondent is entitled to maintenance.

7. In rejoinder, Mr. Naphade, learned counsel for the Petitioner would submit that the definition of economic abuse provided in the D. V. Act, would indicate that there has to be a deprivation of all or any economic or financial resources or which the aggrieved person requires out of necessity. According to him, the definition of economic abuse will not include a case where attempts are made for resumption of cohabitation and the refusal of

the other spouse to resume cohabitation.

8. Considered the submissions and perused the record.

9. The issue which arise for consideration is whether the Appellate court was right in reversing the finding of the Trial Court rejecting the application seeking maintenance and residential orders. Perusal of the order of the Trial Court would indicate that the Trial Court has considered the comparative income of the parties and has also considered the pleadings of the Respondent in the application as regards the mental and the economic abuse. Despite having noted the allegations in the application, the Trial Court on the basis of certain emails have come to a finding that *prima facie* case of domestic violence is not made out. On the basis of the emails and the photographs, the Trial Court has come to a *prima facie* finding that the story of the Respondent is more probable. The Trial Court appears to have been swayed by the emails which have been exchanged between the parties to come to a finding that there was no emotional abuse. However, the Trial Court has failed to taken into consideration that the case of the applicant was not only of emotional abuse but also of economic abuse. The pleadings in the application although had pleaded that there was support from the Petitioner during the dispute between the parties, on perusal of entire application, *prima facie* the case of domestic violence has been made out. It is the specific

case of the Respondent wife that she was forced to leave her matrimonial house in September as well as November, 2015 and all her belongings are lying in the matrimonial house. She has also pleaded that she was staying in her sister's flat and due to shortage of sufficient space, she is forced to stay alone and she paying a sum of Rs. 6,500/- per month rent to the owner of the flat. In the face of said allegations in the application, it was the duty of the Trial Court to consider the issue not only as regards the emotional abuse but also the case of economic abuse, particularly, considering the definition of domestic violence, as defined under Section 3 of the D. V. Act. The stated object of the D.V. Act is to provide for effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therein. The object is sought to be achieved by including in the definition of domestic violence not only physical abuse but also sexual, verbal and emotional abuse as well as the economic abuse. That being the stated object of the D.V. Act, it was incumbent upon the Trial Court to address itself to the issue of economic abuse which the Trial Court had failed to do. In the Appeal against the said order, the Appellate Court not only considered the issue of emotional abuse but also considered the comparative incomes of the parties and has observed that there is nothing on record to indicate that after the

Respondent starting residing separately, the Petitioner-husband ever attempted to maintain the Respondent or has taken care of her residence. Based on this observation, the Appellate Court has come to a finding that the the same amounts to economic abuse and was directed the Petitioner-husband the payment of the interim compensation of 20,000/- per month and rent of Rs. 10,000/- per month.

10. The submission of Mr. Naphde, that the Appellate Court could not have interfered with the findings of the Trial Court in exercise of his discretion by relying upon the decision in the case of *Abhijit Bhikaseth Auti vs. State of Maharashtra & Anr.*, [2008SCC OnLine Bom 1388] is misplaced. There is no quarrel with the proposition of law which has been set out in the said decision. However in its application to the facts of the present case, what can be found that there was perversity in the findings of the Trial court inasmuch as the Trial Court failed to exercise the jurisdiction vested in it to consider the case of economic abuse which was specifically pleaded by the Respondent-wife in her application and which has been taken care of by the Appellate Court. Notably as rightly pointed out by the learned counsel for the Respondent, by filing of its affidavit of assets and expenditure, there has been a suppression of the income by the Respondent by stating that he is unemployed. This is sought to be justified by stating that the Petitioner used to be sail on projects and at the

relevant time when the Affidavit was filed, he was not assigned any project and as such, it was been shown as unemployed. This explanation cannot be accepted as the reason for the filing of the Affidavit of assets and expenditure is to arrive at a *prima facie* assessment of the comparative incomes of the parties so as to ascertain amount of interim maintenance before the evidence has been led. The Petitioner has suppressed the income which is otherwise available to the Petitioner, as intermittently even if he is not sailing, cannot be said that during the entire year, there was no income earned by the Petitioner. Pertinently, the expenditure column would indicate that the household expenses as well as the medical expenses and insurance for the parents, house staff and the housing society maintenance amounts to almost one and half lakh of rupees. In addition thereto there are certain loans and EMIs which are being paid. That being so, it is not acceptable that the Petitioner was unemployed and inspite thereof was incurring those expenditure stated therein.

11. As regards the submission of learned counsel for the Petitioner that unless there is a deprivation of economic or financial resources as defined under clause (iv) Explanation 1 of Section 3 of the D.V. Act, the same will not amount to economic abuse, it has been held in the case of *Ritesh Ratilal Jain and Ors Vs Sandhya W/o. Ritesh Jain and Anr., [2013 CriLJ 3909]*, that when after ill-treating the wife husband leaves her at her

parental home and do not take responsibility to provide her maintenance, the same would certainly constitute economic abuse within the meaning of the D. V. Act.

12. The Act which is a beneficial legislation for the protection of the women has to be interpreted broadly to include even a case where even if the Respondent -wife does not wish to join the husband for any reason at the matrimonial house, the same would not dis-entitle the wife to the maintenance unless it is pointed out that sufficient provision has been made by the husband for providing her maintenance. Considering the disparity in the income of the party as well as the necessity which has been put forward by the Respondent wife for maintenance, it cannot be said that the order of the Appellate Court suffers from any infirmity, so as to warrant interference under Article 227 of the Constitution of India. That apart, the suppression of the material facts also compels this Court not to interfere with the order of the Appellate Court.

13. The Petition being devoid of merits stands dismissed.

14. At this stage request is made on behalf of the learned counsel appearing for the Respondent No. 1 to permit the withdrawal of the amount of Rs. 10,00,000/- which has been deposited in this Court.

15. To this submission, learned counsel for the Petitioner submits that

there is non compliance of the order dated 8th December, 2023. Such conduct on part of the Petitioner cannot be countenanced. Despite non compliance of the order dated 8th December, 2023 the said fact was not pointed out to this Court when the submissions were advanced. It was expected of the Petitioner to first point out this fact that there is a non compliance of this order dated 8th December, 2023 as the Petition could have been dismissed in limine for non compliance of the Order. However to give an opportunity to the Petitioner to comply with the order dated 8th December, 2023, the Petitioner is directed to pay sum Rs. 10,00,000/- to the Respondent on or before 9th January, 2024.

16. List the Petition on **10th January, 2024** under the caption ‘for compliance’.

(SHARMILA U. DESHMUKH, J.)