



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO. 37 OF 2024

Maroti S/o. Vithalrao Munde,
Age about 50 years, Occ. Service,
R/o. Ramdeo Colony, Gondia.

... **PETITIONER**

// VERSUS //

Rukhmini W/o. Maroti Munde,
Age 39 years, Occ. Service,
R/o. Keshori, Tah. Arjuni-Morgaon
Dist. Gondia.

... **RESPONDENT**

Shri R. R. Vyas, Advocate for petitioner.
Shri N. S. Khandewale, Advocate for respondent.

CORAM :- M. W. CHANDWANI, J.

DATED :- 28.02.2024

ORAL JUDGMENT :-

Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. The petition challenges the order dated 31.01.2023 passed by the Judicial Magistrate First Class, Gram Nayalaya, Goregaon, District Gondia in Misc. Criminal Application No. 12/2020, thereby awarding compensation of Rs.5 lakhs under the provisions of the Protection of

Women from Domestic Violence Act, 2005 (for short, “the DV Act”). The petition also lays a challenge to the order 04.10.2023 passed by the learned Additional Sessions Judge (ASJ), Gondia dismissing the Criminal Appeal (PWDV) No. 3/2023 filed by the petitioner.

4. The bare facts, which leads to filing of the present petition, can be summarized as under:-

The respondent filed a petition under Section 12 of the DV Act for grant of maintenance @ Rs.1,20,000/- per month and an amount of Rs.25 lakhs as compensation towards mental and physical torture, harassment and emotional distress. The petitioner resisted the said claim and came up with a case that the respondent is infected with Human Immunodeficiency Virus (HIV) and therefore with the consent of the respondent, he is residing with one lady named Swati in live-in-relationship.

5. The learned Trial Court after hearing the parties partly allowed the application filed by the respondent by dismissing the claim of maintenance of the respondent however, the Trial Court directed the petitioner to pay an amount of Rs.5 lakhs to the respondent towards mental and physical harassment. The petitioner made an unsuccessful attempt by filing criminal appeal before the learned ASJ, Gondia. Feeling

aggrieved with the impugned orders, the present petition came to be filed.

6. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and also gone through the record.

7. It is submitted on behalf of the learned counsel for the petitioner that the Trial Court as well as the Appellate Court did not appreciated the evidence in proper perspective. According to him, the respondent is suffering from HIV and therefore, she herself conceded to the petitioner to reside with Swati. No physical or mental harassment is done at the hands of the petitioner rather the petitioner is a sufferer. He submitted that apart from herself, the respondent did not examine any other witness to prove cruelty. The Trial Court as well as the Appellate Court did not appreciated these aspects and passed the orders impugned. Lastly, he submitted that even the quantum of compensation is too high and sought quashing of the orders impugned.

8. *Per contra*, the learned counsel for the respondent submits that the petitioner failed to prove that the respondent is suffering from HIV, rather according to him, this allegation itself amounts to cruelty on the respondent. He further submitted that even in the marriage petition filed by the respondent, the Court has passed the decree of divorce,

where the same allegations were made by the petitioner and which were repealed by the Court. According to him, the orders impugned are just and proper and sought rejection of the petition.

9. I have gone through the orders impugned. It appears that the respondent's case is that the petitioner is residing with one lady by name Swati and the petitioner got two children from her. Whereas, the petitioner has come up with a case that he is residing with Swati on the consent given by the respondent. According to the case of the petitioner, the respondent was infected with HIV. It appears from the orders impugned that the petitioner could not prove the fact that the respondent is infected with HIV and therefore, considering the fact that the petitioner is residing with one Swati and also the petitioner is having children from Swati, the Trial Court as well as the Appellate Court has held that there was physical and mental harassment caused to the respondent not only due to the petitioner residing with Swati and having extra-marital relation but, also on count of the allegation that the respondent is infected with HIV. Though, the Trial Court as well as the Appellate Court held that the respondent is not entitled for maintenance, as she is earning but, both the Courts have granted the compensation of ₹5 lakhs to the respondent for mental and physical agony. There were concurrent findings of the Trial Court as well as Appellate Court. No

perversity or illegality is shown by the petitioner in the orders impugned. Therefore, the petition sans merit and deserves to be dismissed.

10. Hence, the Writ Petition is dismissed. Rule is discharged.

(M. W. CHANDWANI, J.)

RR Jaiswal