



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

907 CRIMINAL WRIT PETITION NO. 82 OF 2025

**SAMIUDDIN KAMRODDIN KAZI
VERSUS
AAFRIN BEGAM W/O SAMIUDDIN KAZI**

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Advocate for the Petitioner : Party In Person
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**CORAM : Y.G. KHOBRAGADE, J.
DATE : 04.02.2025**

PC.:-

1. Heard the Petitioner in person at length.
2. By the present petition, the Petitioner is challenging the order dated 25.10.2024 passed by the learned Additional Sessions Judge-3, Parbhani in PWDV Appeal No.37/2023, thereby the order dated 01.11.2023 passed by the learned JMFC, Sailu, Dist. Parbhani below Exh.12 was affirmed.
3. The present Petitioner is the Ori. Non-Applicant No.2 and the Respondent-Wife is the Ori. Applicant in PWDVA No.20/2022. The Respondent instituted a application under Section 12 of the the Protection of Women from Domestic Violence Act, 2005 (for short the 'DV Act'). For the sake of brevity, I would like to refer the parties to the present petition in their original capacity.

4. Indeed, the Respondent/Wife has filed a proceeding PWDVA No.20/2022 under Section 12 of the DV Act before the JMFC, Sailu, alleging tha, on 13.02.2011, her marriage was solemnized with the present Petitioner as per the customs and rights prevailing in their community. At the time of marriage, her parents gave household articles and spent huge amount on her marriage. After the marriage, she co-habited with her husband present Petitioner at Mahavir Nagar, Chikli, in the joint family. Initially, for some days she was treated well, however, subsequently on minor and trifle issues she was being ill-treated on one or the other grounds. Her husband present Petitioner always used to say that she is not good looking and he did not like her. His heart is with his first wife. She was treated like maid servant. The Complainant further alleged that the relatives of her husband used to instigate her husband by making false allegations against her and her husband used to mercilessly beat her. Further, her husband demand Rs. Two Lakhs for construction of house and due to non-fulfillment of said demand, domestic violence was raised against her. So also, she was insulted and beaten mercilessly. On 12.02.2021, her husband asked her as to why she did not bring Rs. Two Lakhs from her parents and mercilessly beat her. She further contended that out of her matrimonial relations she delivered two children, however, she has been driven out of her matrimonial house and she is living at the mercy of her parents.

5. Therefore, on 07.03.2022 she submitted an application with the Police Inspector, Police Station, Sailu but after intervention of the police, she again co-habited with her husband in the matrimonial house but again she has been subjected to domestic violence and she was compelled to leave her matrimonial house. Since then her husband has failed to maintain her and her children. Therefore, she filed an application under Section 12 of the DV Act.

6. After service of notice, the present Petitioner/Ori. Non-Applicant No.1 filed Exh.12 preliminary objection about maintainability of proceeding and prayed for dismissal of the petition under Section 12 of the DV Act. The Petitioner/Ori.N.A. contended that on 12.02.2021, he and other Non-Applicants had been to Osmanabad Court for engaging a counsel to defend the cause in RCS No.635/2020, (Shagufta Begum V/s. Shoaib Kazi Anjar Ahmed) and after completing the Court work they return to home. Thereafter, they had dinner and went to Latur road. But on the same day at about 21.25 hours, they boarded a Train to Jalna and on 13.02.2021 at about 3.30 hours upon reaching Jalna they boarded a Bus to Chikli. On 13.02.2021, he attended the School in morning on account of Saturday. However, the Respondent/ Ori. Applicant-Wife lodged a FIR against the Petitioner on 26.06.2022 alleging that, her mother Latifa Begum was not feeling well and she had been at Sailu to meet her mother. It is further contended by the

Petitioner that he came to know from reliable sources that on 12.02.2024 at about 7.30 a.m., the Respondent Wife had gone to Sailu by Bus.

7. Further as per the averment made in the complaint, domestic violence was raised against the Applicant since 12.02.2021 for a period of around 14 months but the Respondent-Wife has not given specific incidents. On the contrary, the Petitioner-husband came to know from Mrs. Dilshad Bano Shadab Ali, R/o Maulana Azad Nagar, Sailu, the neighbour that the Respondent-wife visited at the neighbour's house and called the present Petitioner-Husband but the Respondent-Wife refused due to fear of the Applicant's uncle. Therefore, the Petitioner submits that, there is no cause of action to file an application under Section 12 of the DV Act, hence prayed for dismissal of the application.

8. On 01.11.2023, the learned JMFC, Sailu passed an order and rejected Exh.12 application for preliminary objection holding that the Respondent-Wife/Ori. Applicant made a specific allegations about raising domestic violence against her at the hands of the present Petitioner and his relatives.

9. Being aggrieved by said order, the Petitioner filed an Appeal bearing PWDV Appeal No.37/2023 under Section 29 of the DV Act. On

25.10.2024, the learned Additional Sessions Judge-3, Parbhani passed the impugned order and dismissed the appeal holding that on 12.02.2021, the Petitioner was in Osmanabad Court and he was not present in his house. As per the certified copy of FIR in Crime No.171/2022 registered with Sailu Police Station it shows that the Respondent-Wife/Ori. Applicant had lodged a complaint against her husband i.e. Petitioner and relatives of her husband alleging that on 12.02.2021, she went to Sailu to see her ailing mother and when she made a phone call and requested her husband i.e. the Petitioner to take her back as she was intending to go at her matrimonial house but her husband (Petitioner) abused her and declined to take her back for co-habitation at her matrimonial house.

10. On face of record it appears that, the Respondent/Wife had lodged a complaint against the present Petitioner and her husband's relatives in respect of raising domestic violence against her within the meaning of Section 3 of the DV Act w.e.f. 12.02.2021 till 22.08.2021. The Respondent-Wife aggrieved person further alleged that she was subjected to cruelty and domestic violence because of non-fulfillment of demand of Rupees Two Lakhs for construction of the house.

11. Section 3(b) of the DV Act provides that 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.

12. No doubt, defence of the present Petitioner that, on 12.02.2021, he was present in Osmanabad Court, therefore, he has not raised domestic violence against her Wife/Respondent on 12.02.2021, hence, no cause of action arises. However, the learned Appellate Court held that, merely the Petitioner has raised defence that on the particular date i.e. 12.02.2021 he was present in the Osmanabad Court itself is not a ground for dismissal of the entire proceeding initiated under the DV Act.

13. Needless to say that the Respondent-Wife has not alleged about raising domestic violence against her in respect of the date particularly 12.02.2021 but the Respondent specifically alleged that, w.e.f. 12.02.2021 till 22.08.2021 domestic violence was raised against her and is sufficient to continue with the proceedings. Therefore, I do not find that the Petitioner has set out substantial grounds to interfere with said findings, hence, the petition is dismissed.

[Y.G. KHOBRADE, J.]