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crwp210.18

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

**CRIMINAL WRIT PETITION NO. 210 OF 2018
WITH
CRIMINAL APPLICATION NO. 3835 OF 2023**

Umesh s/o. Dattatraya Pathak .. Petitioner
Age. 38 years, Occ. Service,
R/o. Flat No.33, Building No. 118,
Shivrang Society, Rabodi, Thane (W).

VERSUS

- 1) Mrs. Madhura w/o. Umesh Pathak, .. Respondents
Age. 33 years, Occ. Household,
R/o. C/o. Vishwanath Methe,
House No. 557, Chikalthana,
Aurangabad.
- 2) The State of Maharashtra
Through Chikalthana Police Station,
Chikalthana, Aurangabad.

Mr. M.M. Joshi, Advocate for the petitioner.
Mr. H.H. Padalkar, Advocate for the respondent.
Ms. A.S. Deshmukh, AGP for respondent-2/State.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 07.07.2025
PRONOUNCED ON : 24.07.2025

ORDER :-

01. Heard learned Advocates for the parties. This petition is taken
up for final disposal at the stage of admission by consent of the parties.

02. The petitioner is husband of respondent No.1. By way of this petition, the petitioner has prayed for setting aside judgment and order dated 21.09.2017, passed by the learned Additional Sessions Judge, Aurangabad, in PWDVA Appeal No. 49 of 2015. The learned Judge, thereby, modified the order passed by the learned 12th JMFC, Aurangabad dated 05.02.2015, passed in Criminal Misc. Application No. 1337 of 2012. The learned JMFC by way of the impugned order, had directed the petitioner to pay an amount of Rs.10,000/- per month towards maintenance and medical expenses to the wife. It was further directed to pay Rs.4000/- per month towards rent. The petitioner and his relatives were also directed to pay an amount of Rs. 2 lakhs towards compensation to the wife. The learned Sessions Judge by way of the impugned order confirmed the order to the extent of grant of Rs. 4000/- per month to the wife. The direction to the extent to pay an amount of Rs.2 lakhs towards compensation was modified and instead of directing it to be paid the respondents and relatives, it is restricted only to the extent of husband.

03. The facts in the petition unfolded are that on 12.07.2008, the Marriage between the parties took place at Majalgaon. The parties

resided together at Majalgaon for 8-10 days. Within few days of the marriage, the wife went to her parents' house at Aurangabad on the pretext of appearing for examination. She stayed with her parents and did not return to Majalgaon. For brief period, she came to Majalgaon and again went to Aurangabad, as her mother was to undergo an eye operation. Since December, 2008 till July, 2010, she stayed with her parents only. On 19.01.2010 a meeting took place between the parties. It was decided to take divorce by mutual consent. The husband was residing at Thane due to his service. On 17.07.2010 as per allegation of the husband, the wife came with her parents to Thane and threatened of criminal complaint. On 31.07.2010 father of the husband lodged a complaint against the wife and her parents. An NC was registered bearing No. 465 of 2010. However, the husband and wife again started residing together separate from parents in a rented premises, in another locality in Thane. The couple, however, still could not pull on well. The husband again filed complaint against wife in the Women's Grievance Redressal Cell on 01.12.2010. There statements of wife, father and brother were recorded. Ultimately, the husband filed proceeding for divorce bearing HMP No. 118 of 2011 in the Family Court, Thane on the ground of cruelty on 24.06.2011. On receipt of summons in divorce proceeding, the wife filed DV proceeding. She also filed a complaint

under sections 498-A and 323 of the IPC. In this DV proceeding, the learned JMFC passed an order in favour of the wife and against husband and relatives. Said order came to be modified. Thus, the petitioner is before this Court.

04. Learned Advocate Mr. Joshi for the petitioner submits that the petitioner-husband approached this Court with a case that there is no evidence of domestic violence and still the order is passed. It is necessary to show instances of domestic violence to get any relief under the provisions of the Protection of Women from Domestic Violence Act. The wife had also filed proceeding under sections 498-A and 323 of the Indian Penal Code against the husband and his relatives. The learned Trial Judge was pleased to acquit the husband and relatives from the offence under section 498-A of the IPC, however, conviction under section 323 of the IPC was awarded. In the appeal, the learned Sessions Judge acquitted them even from the offence punishable under section 323 of the IPC. Thus, there is no substance in the allegation. He further submits that the domestic violence proceeding was filed only to harass the husband and in-laws. The learned Sessions Judge has failed to appreciate these aspects and instead of allowing the appeal completely, has only allowed it partly.

05. Learned Advocate Mr. Padalkar for the respondent-wife submits that there is ample evidence on record to show instances of domestic violence. The evidence is rightly considered by the learned Sessions Judge and he has rightly passed the order. He prays for dismissal of the petition.

06. Learned Advocate for the petitioner submitted that when the parties were residing separately for maximum period after marriage, there is no question of domestic violence. A divorce proceeding was filed by husband and it is only to counter the said proceeding, the wife has lodged the DV proceeding. The wife is also an educated woman having degree in Computer Science. Since 2010, they were residing separately. From December, 2008 till July, 2010, she was staying with her mother. Thus, there is no any instance of domestic violence. The proceeding itself is filed after 2½ years after separation. The learned Courts below failed to appreciate this fact. The wife's complaint that the husband ignored her complaint about humidity in Thane is an instance of domestic violence. This, hardly can be taken as an instance of domestic violence. The Trial Court considered only photocopies of documents as evidence. Incorrect findings are recorded. The Trial Court failed to appreciate that

the facts stated by the husband and admitted facts were not required to be proved. However, the learned JMFC recorded finding that the husband has not proved facts as stated by him. This finding is contrary to the record. He thus submits that even the Sessions Court did not appreciate this fact. He, thus, prays for allowing the writ petition.

07. Learned Advocate for the respondent-wife pointed out evidence of the husband to submit that from the evidence it is clear that he committed an act of domestic violence. He submits that the allegations in the DV proceeding itself is sufficient to prove the case. He prays for dismissal of the writ petition.

08. The learned Trial Court considered copy of the FIR in the case under section 498-A of IPC and prescription of Doctor showing that the wife was suffering from cough. He further considered that the husband did not come forward for compromise. The husband failed to produce on record copy of complaint filed with the Women's Grievance Redressal Cell that there was domestic violence on petty reasons. The husband used to suspect character of the wife, which amounts of domestic violence and mental torture. The husband deserted the wife economically.

09. The learned Sessions Judge while allowing the application has set aside the order to the extent of relatives of the husband. It is discussed that there is nothing on record to show that the husband tried to bring back the wife for cohabitation. He further considered that in the flat at thane, there was moisture due to water leakage from the wall. Therefore, she was facing breathing problem and still that complaint was not properly handled by the husband and confirmed the finding to the extent of the husband.

10. The learned Advocate for the petitioner submits that so far as complaint with Women's Grievance Redressal Cell is concerned, there is clear admission by wife about filing of such complaint. He rightly pointed out that there is no instance of any domestic violence. The complaint about moisture in the flat cannot be said to be an act of domestic violence. The finding about suspicion about character, this Court finds that there is no allegation by the husband anywhere in his pleading or in his evidence. The learned JMFC has also specifically recorded that there is no allegation of assault. The learned JMFC, however, has recorded that pulling quarrels on petty reasons amounts to domestic violence. This Court can hardly take such instance as an act of domestic violence. So far as desertion is concerned, it has come on record that in-fact it is wife

who stayed with her mother under the pretext that her mother had to undergo eye operation. So far as findings of the learned Sessions Judge is concerned, this Court finds that those findings are without any basis. On one hand, the learned Sessions Judge has accepted that after marriage it is the wife who left company of the husband on her own, still he has considered the same to be an act of domestic violence. So far as bringing back wife for cohabitation is concerned, in the reply of the husband itself he has given instances showing that he tried to bring her back. The finding recorded by the Sessions Court is thus against the record. Having difficulty in breathing because of moisture due to leakage in wall can hardly be said to be an act of domestic violence. There is not a single instance on record showing any act of domestic violence. Both the Courts by erroneous reasoning have come to a conclusion that there was violence at the hands of the husband.

11. The learned Advocate for the petitioner rightly relied upon an order passed by this Court in the case of **Jayesh Uttamrao Khairnar and Ors. Vs. The State of Maharashtra & Ors., [Cri. W.P. No. 259 of 2009 – Aurangabad Bench]**. This Court in the said judgment, has held that the proceeding was filed with malafide intention to harass the husband and his relatives and quashed the proceeding.

12. It is clear that, unless there is an act of domestic violence, no relief can be prayed under the DV Act. In absence of any domestic violence and for the reasons which are consequential, this Court finds that both the Courts below committed mistake in recording that there was domestic violence at the hands of the present petitioner-husband and have passed the orders against the record, which deserve to be set aside.

13. Therefore, this Criminal Writ Petition is allowed in terms of prayer clause (B) and disposed off.

14. So far as Criminal Application No. 3835 of 2023 is concerned, same is filed by wife to withdraw an amount of Rs. 2 lakhs deposited by husband in this Court and for directions to comply order of this Court dated 19.04.2023 directing the husband to deposit 50% of the arrears to show his bonafides. The husband has already deposited an amount of Rs. 2 lakhs pursuant to order passed by this Court. It is alleged that the amount of arrears as on today is much higher. Considering the reasons given above, this Court is not inclined to allow this application in its entirety. Since an amount of Rs.2 lakhs is already deposited, the

respondent-wife is entitled to withdraw an amount of Rs.2,00,000/- (Rupees Two Lakhs Only). The Criminal Application is accordingly disposed off.

[KISHORE C. SANT, J.]