



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

915. CRIMINAL WRIT PETITION NO. 215 OF 2019

1. Vicky S/o Gorge Rathod
Age: 336 yrs, Occ. Service,
Adds: K-Type House no.412,
Tadiwala Road, Near Pune Station,
Pune.
2. Georg S/o Madhukar Rathod
Age: 56 yrs, Occ. Nil.
Adds: K-Type House no.412,
Tadiwala Road, Near Pune Station, Pune.
3. Sunanda w/oGeorg Rathod
Age: 52 yrs, Occ. Household,
Adds: K-Type House no.412,
Tadiwala Road, Near Pune Station,
Pune.
4. Rita w/o Lwarence Samual
Age: Major, Occ. Household,
Adds: K-Type House no.412,
Tadiwala Road, Near Pune Station, Pune.
5. Sujata w/o Sunil Kardak
Age: 45 yrs, Occ. Service,
Adds: Somnath Nagar, Chandan
Nagar Area, Pune.
6. Ashok Paul Shinde
Age: 70 yrs, Occ. Nil,
Adds: Tadiwala Road,
Near Pune Station, Pune.
7. Sunil S/o Rambhau Kardak
Age: Major, Occ. Business,
Adds: Somnath Nagar, Chandan
Nagar Area, Pune.

... **PETITIONERS**

V/s.

1. Saw. Anita w/o Vicky Rathod
Age: 33 yrs, Occ. Service,
R/o. Kanosa Parisar, Shirasgaon,
Tq: Shrirampur, Dist. Ahemadnagar.

2. The State of Maharashtra through
A.G.P. Aurangabad.

... **RESPONDENTS**

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Ms. Kalpana Kulkarni (Sonpawale) and Mr. Dayanand M. Hange,
Advocate for the Petitioners (Appointed)

Mr. S.M. Ganachari, APP for the Respondent-State

Mr. Niraj Chudiwal h/f. Satej Jadhav, Advocate for the Respondent No.1

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CORAM : Y.G. KHOBRAGADE, J.

DATE : 10.01.2025

ORAL JUDGMENT:-

1. As per order dated 16.07.2024, the Mediator has submitted it's report dated 16.10.2024 stating that the Mediation is failed. The said report is taken on record and marked 'X' for identification.

2. Rule. Rule made returnable forthwith. Heard finally with consent of both the sides at the stage of admission.

3. The petitioners have invoked jurisdiction of this Court under Article 227 of the Constitution of India and questioned legality and validity of the Judgment and order dated 21.06.2018 passed by the Additional Sessions Judge, Shrirampur, in Criminal Appeal No.40/2014 thereby judgment and order dated 01.11.2014 passed by the learned JMFC, Shrirampur, in Criminal

Misc. Application No.307/2010 has been partly quashed and set aside. Further the Petitioner No.1/Ori. Non-Applicant No.1 directed to pay monthly maintenance @ Rs.2500/- per month to the Applicant/Wife and Rs.1500/- per month to the minor daughter-Rechal. The Respondent no. 1 wife is a original Applicant and the Petitioners are original Non-Applicants in Criminal Misc. Application No.307/2010.

4. Facts giving rise to the present petition are that, Petitioner No.1 is the Husband of the Respondent No.1. The marriage between Respondent No.1 and Petitioner No.1 was solemnized on 20.09.2009 as per Christian customs and rites. Out wedlock they blessed with female child- Rechal. On 21.12.2012, the Respondent No.1 filed a Misc. Criminal Application No.307/2010 before the JMFC, Shrirampur, alleging that, she was subjected to domestic violence at the hands of the Petitioners. After conclusion of the trial, on 01.11.2014, the learned JMFC passed an order and rejected application filed by the Respondent No.1.

5. Being aggrieved by said order, the Respondent No.1 filed a Criminal Appeal No.40/2014 before the Sessions Court, Shrirampur. On 21.06.2018, the learned Appellate Court passed the impugned order and quashed and set aside the judgment and order on 01.11.2014 passed by the JMFC, Shrirampur in Criminal Misc. Application No.307/2010 and directed the

present Petitioner No. 1 to pay monthly maintenance of Rs.2500/- per month to the present Respondent No.1/aggrieved party and Rs.1500/- to the minor daughter-Rechal.

6. The learned counsel appearing for the Petitioners canvassed that, the learned Sessions Court failed to appreciate the fact about involvement of substantial and valuable right of the Petitioner No.1 such as the restitution of conjugal rights. The learned Sessions Court further fail to appreciate material facts that, the Respondent No.1 failed to bring sufficient evidence to prove domestic violence against her at the hands of the petitioners. Therefore, impugned order passed by the First Appellate Court in a mechanical manner. The Respondent No.1 failed to bring substantial evidence to constitute domestic violence at the hands of the petitioners. On the other hand, the learned JMFC passed the judgment and order dated 01.11.2014 holding that, the Respondent No.1/aggrieved party has not brought any evidence on record to prove that, the Petitioners 4 to 7 raised domestic violence contemplated u/s 3 of the D.V. Act, against the Respondent No.1. However, the learned Appellate Court failed to consider material evidence placed on record and passed the impugned order which is illegal, bad in law, hence, prayed for quash and set aside.

7. Per contra, the learned counsel appearing for the Respondent No.1/aggrieved party supported findings recorded by the learned Appellate Court. The learned counsel for the Respondent no. 1 canvassed that, matrimonial relations between the Respondent No.1 and the Petitioner No.1 is still intact. Since, the Petitioners have raised domestic violence defined under Section 3 of the D.V. Act, therefore, the Respondent No.1 was compelled to stay away from the Petitioner No.1. The Petitioner No.1 is working in the KEM, Hospital. As per salary slip Exh.31, the petitioner no. 1 drawing salary of Rs.8602/- per month. Therefore, considering evidence available on record, the learned Appellate Court granted monthly maintenance @ Rs.2500/- per month for Respondent No.1 and Rs.1500/- per month for minor daughter. Therefore, impugned order is just and proper, hence, prayed for dismissal of the petition.

8. Having regard to the submissions canvassed on behalf of both the sides, I have gone through the petition paper book. It is an undisputed fact that, on 20.09.2009, marriage between the Petitioner No.1 and Respondent No.1 solemnized as per customs and rites prevailing in the Christian community. After the marriage, the Respondent No.1 co-habited with the Petitioner No.1 in his joint family. The Petitioner Nos.2 and 3 are parental in laws, whereas, the Petitioner Nos.2 and 4 are married sister in laws of the Respondent No.1. The Petitioner No.6 is the maternal uncle of her husband. It

is also admitted fact that out of wedlock between the Petitioner No.1 and Respondent No.1, a female child-Rechal born.

9. The Respondent No.1/ aggrieved person filed an application under Section 12 of the D.V. Act, alleging that, she was subjected to domestic violence at the hands of the Petitioners. Further when she was carrying pregnancy, she was not treated properly and no medical treatment was provided to her. Even after she delivered a child, the Petitioner No.1 questioned that he is not biological father of female child. So also, quarrel was raised with her and during course of quarrel she was assaulted. Therefore, she lodged a report with the Shrirampur city Police Station. Therefore, family dispute between her and petitioners was settled and reconciled after furnishing undertaking by the Petitioner no. 1 in respect of taking her proper care. In spite of said fact, the Petitioner No.1 fail to change his attitude toward her. The Respondent No.1 further alleged that when she was giving swing to her daughter on cradle, the Petitioner No.2, her father-in-law entered in house under influence of liquor and caught hold her hand but she rescued herself by twisting her hand but again on 06.12.2010, the Petitioner No.2 caught hold her hand. So also, she was subjected to domestic violence on account of raising demand of dowry.

10. Needless to say that, the Respondent No.1 filed evidence affidavit at Exh.20 and reiterated the facts of the complaint. The Respondent No.1

undergone cross-examination conducted on behalf of the present Petitioners. However, nothing has been solicited except denial of certain facts. The Respondent No.1 specifically stated that, she studied up to 12th standard but she denied that she is not ready to co-habit with the Petitioner No.1. The Respondent No.1 further denied that, the present Petitioner never subjected her to domestic violence. She further denied that she working being a Nurse in Sakhar Kamgar Hospital.

11. The Respondent No.1 examined her mother Sushila Raosaheb Bhosle at Exh.33. This witness undergone cross-examination. This witness admitted that, the Petitioner/Original N.A. No.1 and the Original N.A. No.7/Petitioner No.7 are not staying in same shelter house.

12. The Petitioner No.1/Original Non-Applicant No.1 filed evidence affidavit at Exh.35, wherein, he admitted about existence of husband and wife relations between him and Respondent No.1. In cross-examination, the present Petitioner No.1 admitted that he studied up to 12th standard. He admitted that he made efforts for restitution of conjugal rights between him and Respondent no. 1 but he denied about raising domestic violence against the Respondent no. 1.

13. On 01.11.2014, the learned JMFC passed Judgment and order holding that, the Respondent No.1/aggrieved party failed to prove about raising domestic violence at the hands of the Petitioners. On 21-06-2018, the learned Appellate Court re-appreciated entire evidence and held that, the Respondent No.1/aggrieved party proved about raising domestic violence at the hands of the Petitioners and granted maintenance of Rs.2500/- per month in respect of Respondent no. 1/ wife and Rs.1500/- in respect of the minor daughter.

14. In the case of **Kalyan Dey Chowdhury V/s. Rita Dey Chowdhury Nee Nandy; (2017) 14 SC 200**, the Hon'ble Supreme Court considered case of **Dr. Kulbhusahan Kumar Vs. Raj Kumari and Anr., (1970) 3 SCC 129**, wherein, it is held that, the wife is entitled for of 25% of her husband's net salary towards maintenance.

15. In the case in hand, the present Petitioner himself admitted that he is a permanent employee of KEM Hospital. As per salary certificate Exh.31, the petitioner no. 1 drawing gross salary of Rs.8602/- per month. The learned Appellate Court granted maintenance of Rs.2500/- per month to the Respondent no.1/ wife and Rs.1500/- in respect of the minor daughter, which does not appear unreasonable and exorbitant. Therefore, I do not find that the Petitioners have made out substantial grounds to interfere with the findings

recorded by the First Appellate Court. In view of above discussion, the Petition is dismissed. Rule is discharged.

16. Since the counsel for the petitioners appointed from the legal aid, therefore, Fees for the appointed counsel is quantified @ Rs.10,000/- and it is payable by the High Court Legal Services Authority.

[Y.G. KHOBRADE, J.]

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