



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 306 OF 2019

- 1] Anand s/o Dinkar Vharkate
Age: 35 years, Occu:- Labour,
R/o Say Gavhan, Tq. Paithan,
Dist. Aurangabad
- 2] Dinkar s/o Vaman Vharkate
Age:- 65 years, Occu:- Agriculturist
R/o Say Gavhan, Tq. Paithan,
Dist. Aurangabad
- 3] Hirabai w/o Dinkar Vharkate
Age:- 60 years, Occu:- Household,
R/o. Say Gavhan, Tq. Paithan,
Dist. Aurangabad
- 4] Santosh s/o Dinkar Vharkate
Age:- 40 years, Occu:- Labour,
R/o Say Gavhan, Tq. Paithan,
Dist. Aurangabad
- 5] Mira w/o Santosh Vharkate
Age:- 35 years, Occu:- Household,
R/o Say Gavhan, Tq. Paithan,
Dist. Ahrangabad

... PETITIONERS
[ORIGINAL OPPONENTS]

VERSUS

Madhra claimed w/o Anand Vharkate
Age:-32 years, Occu:- Household,
R/o Nandiwali, Tq. Shirur Kasar,
Dist. Beed

...RESPONDENT
[ORIGINAL APPLICANT]

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Mr. H. V. Tungar, Advocate for the Petitioners

Mr. R. C. Brahmankar, h/f Mr. N. L. Jadhav, Advocate for the Respondent sole

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 15.04.2025

JUDGMENT :-

1. Rule. Rule made returnable forthwith. With consent of both sides, heard finally at the stage of admission.

2. By the present petition under Article 227 of the Constitution of India, the Petitioners assailed the judgment and order dated 11.01.2019 passed by the learned Sessions Judge, Beed in Criminal Appeal No.16 of 2018, thereby affirmed the judgment and order dated 14.02.2018 passed by the learned J.M.F.C. Shirur Kasar in Miscellaneous Criminal Application No.106 of 2015.

3. The Petitioners are the original non-applicant Nos. 1 to 5 and the Respondent is the original Applicant in Miscellaneous Criminal Application No.106 of 2015 filed under Section 12 of the Protection of Women from Domestic Violence Act (in short, D.V. Act). For the sake of brevity, I would like to refer the parties to the present

petition in their original capacity as Applicant/aggrieved party and Petitioners/original non-applicants.

4. Having regard to the submissions canvassed on behalf of both the sides, I have gone through the record.

5. The aggrieved party/applicant instituted Miscellaneous Criminal Application No.106 of 2015 under Section 12 of the D.V. Act, alleging that, on 14.12.2014, her marriage was solemnized with non-applicant No.1 as per the customs and rites prevailing in their society. The said marital tie is still in existence. Non-applicant Nos. 2 to 4 are the family members of her husband, non-applicant No.1. After marriage, she cohabited with her husband-non-applicant No. 1 in the joint family. Initially, she was treated properly for two months. Thereafter, the non-applicant No.1 husband demanded Rs.2,00,000/- (Rupees Two Lakh) from her parents for purchase of Tractor and due to non fulfillment of said illegal demand, she was left to suffer in agony. So also, she was not allowed to visit the neighbours' house, because the non-applicant No.1-husband deceived her and her parents about his first marriage and its dissolution and got married with her. In spite of said facts, she co-habited with non-applicant No.1. On 26.02.2015, she visited her parental house and disclosed

her parents about demand of Rs.2,00,000/- (Rupees Two Lakh) by the non-applicants. On 08.03.2015, her parents and relatives visited the non-applicants and requested them to treat the applicant properly and they also agreed to fulfill said demand in next year. Thereafter, the non-applicants agreed to maintain the applicant, if Rs.2,00,000/- paid to them.

6. On 17.07.2015, at about 06.00 p.m., the non-applicants visited parental house of the applicant, at that time, the non-applicants abused her parents and demanded Rs.2,00,000/- and threatened to give divorce to the applicant, if the demand is not fulfilled. It is further alleged that Non-Applicant No. 2 stated that the marriage of Non-Applicant No. 1 had earlier been performed, but the parents of that bride did not pay the money. Therefore, Non-Applicant No. 1's second marriage was performed with the applicant. If the applicant's parents fail to pay the amount, Non-Applicant No. 1 would perform another marriage. It is further alleged that non-applicant No.2 manhandled the applicant's father and the non-applicant No.4 issued life threat. Thereafter on hearing commotion, neighbours came and rescued them. On the next day, the applicant visited Shirur Police Station, but no cognizance was taken by the Police. The Applicant

further alleged that, the non-applicants raised domestic violence due to non-fulfillment of illegal demand of dowry defined under Section 3 of the D.V. Act. Therefore, she prayed for monetary relief as described in paragraph No.10 of the application.

7. After service of summons, the non-applicants appeared and filed their reply at Exh. 16. The Non-applicants denied all adverse allegations made against them. According to the non-applicants, the applicant has filed false and vexatious complaint under Section 12 of the D.V. Act without any basis. According to the Non-applicants, the applicant is not wife of the non-applicant no. 1 and their marriage was never performed. There is no existence of matrimonial relations between the applicant and non-applicant No.1 nor domestic relations between them. So also, they never raised domestic violence against the applicant. The applicant is maternal cousin sister of non-applicant No.5. On 04.11.2014, the applicant's father, her paternal uncle Bhausahab and cousin Subhash visited their house and proposed the non-applicant no. 1 for marriage although the fact of divorce of non-applicant's no. 1 was disclosed. On 09.11.2014, non-applicant Nos.1, 4 & 5 and their relative, namely, Gokul Halnor went to Nandewali to see the applicant. Thereafter,

non-applicant no. 1 agreed to marry with the applicant and on the same day engagement ceremony was performed in haste. However, date of marriage to be fixed after 2-3 months. On 18.11.2014, the applicant informed non-applicant no. 1 over the phone that her parents were arranging her marriage against her wishes. She was in a love affair with another boy and desired to marry him; hence, she requested non-applicant no. 1 to refuse the marriage proposal. Although non-applicant no. 1 disclosed this fact to his family members, the applicant's father compelled him to proceed with the marriage. Non-applicant no. 1 further alleged that the applicant's father threatened to kill him if he refused to marry the applicant.

8. He further claimed that he had firmly refused to marry the applicant. Later, he came to know that the applicant and her paramour were severely assaulted by her relatives. Moreover, the applicant's relatives allegedly threatened the non-applicants with false criminal cases and imprisonment. Despite this, non-applicant no. 1 remained firm in his decision. However, due to this annoyance, the applicant has filed a false application, and therefore, he prays for its rejection

9. In order to prove marriage ceremony and cohabitation, the applicant examined herself at Exh.6. The applicant examined AW-2 Uttam at Exh.19 and her parental uncle Nivrutti AW-3 at Exh.20. The non-applicant No.1 husband examined himself at Exh.24 and another witness Shri Jitendra NAW-2 at Exh.25.

10. On 14.02.2018, the learned J.M.F.C., Shirur Kasar, passed the judgment and order holding that, due to non fulfillment of demand of Rs.2,00,000/-, the applicant was subjected domestic violence and non-applicant No.1 concealed his first marriage and deceived the applicant, in spite of said fact that, the applicant cohabited with non-applicant no. 1 for two months and marital relations between the applicant and non-applicant No.1 is in existence. The applicant and non-applicant no. 1 lived together in a shared house and they are in domestic relations. There is no reason to disbelieve the applicant that on 26.02.2015, non-applicant No.1 raised demand of Rs. 2,00,000/- for purchasing Tractor, and therefore, the applicant lodged the complaint for the offence u/s 498-A. The non-applicant no. 1 was not maintaining the applicant since 26.02.2015 and flatly denied marital tie with applicant, which

constitute domestic violence against the applicant. Therefore, considering the evidence available on record as well as earning capacity, the learned Trial Court directed the non-applicant No.1 to pay Rs.3,000/- per month to the applicant towards maintenance from the date of the application.

11. Being aggrieved by the said order, the non-applicants had filed Criminal Appeal No.16 of 2018 under Section 29 of the D.V. Act. On 11.01.2019, the learned Appellate Court passed the impugned order holding that, the non-applicant No.1 husband disputed about solemnization of marriage with the applicant wife. However, evidence available on record proves that, the marriage between the applicant and non-applicant No.1 solemnized on 14.12.2014 and their marital relations still exist. Therefore, considering the evidence available on record the Appellate Court affirmed the judgment and order dated 14.02.2018 passed by the learned J.M.F.C. in Misc. Criminal Application No.106 of 2015.

12. The learned counsel appearing for the petitioners canvassed that both the Courts below erred in holding that the marriage between the applicant and non-applicant no. 1 had been

solemnized, despite the absence of sufficient evidence on record. Furthermore, both Courts failed to appreciate material contradictions, as no engagement ceremony had taken place, and the applicant came to know about her marriage only on the previous day. The applicant's father, Shri Uttam, stated that the applicant and non-applicant no. 1 had not seen each other prior to the marriage; however, their engagement allegedly took place on 09.09.2014, and the marriage was fixed on the same day. Contrarily, the applicant's uncle admitted that the marriage had been fixed 15 days prior to its solemnization. Although the applicant claimed that more than 50 persons were present at the wedding but other witnesses during cross-examination admitted that 500–600 invitees were present at the marriage ceremony. Therefore, the factum of marriage was not duly proved. Despite this, both the Courts below recorded perverse findings and granted monetary benefits. Hence, the petitioners prayed for both judgments to be quashed and set aside

13. Per contra, the learned Counsel appearing for the Respondent supported the findings recorded by both the courts below. It is canvassed that, on 14.12.2014, marriage between applicant and non-applicant No.1 solemnized. Since then the applicant and non-

applicant no. 1 are in domestic relations. After marriage, the applicant cohabited with her husband Non-applicant No. 1 in the joint family. Initially, she was treated properly for two months but subsequently, non-applicant No.1 husband demanded Rs.2,00,000/- (Rupees Two Lakh) from parents of the applicant for purchase of Tractor and due to non fulfillment of said illegal demand, domestic violence raised against the applicant. The non-applicant no. 1 had deceived the applicant on account of his first marriage and divorce and did not allow her to visit neighbours. On 26.02.2015, applicant visited her parental house and disclosed her parents about raising of demand of Rs.2,00,000/- (Rupees Two Lakh) by the non-applicants. On 08.03.2015, her parents and relatives visited house of the non-applicants and requested them to treat the applicant properly and was assured to fulfill said demand in the next year. Thereafter, the non-applicants agreed to maintain the applicant only if Rs.2,00,000/- paid to them. However, on 17.07.2015, at about 06.00 p.m., the non-applicants visited parental house of the applicant and at that time, the non-applicants abused her parents and demanded Rs.2,00,000/- and issued threat to give divorce to the applicant, if the demand is not fulfilled. So also, the non-applicant No.1 would perform another

marriage, if the applicant's parents failed to pay said amount and issued life threat. On the next day, the applicant visited Shirur Police Station and lodged the complaint, but no cognizance was taken by the Police. The non-applicants raised domestic violence due to non-fulfillment of illegal demand of dowry defined under Section 3 of the D.V. Act. Both the Courts below concurrently held that, marriage between the applicant wife and non-applicant no. 1 solemnized on 14.12.2014 and the non-applicants raised domestic violence. Therefore, prayed for dismissal of the petition.

14. Since the Petitioners/ori. Non-applicants denied the fact of solemnization of marriage between the applicant-wife and non-applicant no. 1-husband. I have gone through the evidence led by both the sides. The A. W. 1 stated in her evidence affidavit Exh. 6 that, her marriage solemnized with the Non-applicant no. 1 on 14.12.2014. In the cross-examination of the applicant, the defence suggested that no marriage was solemnized, but the applicant denied the said suggestion. The Non-applicant no. 1 admitted in his cross examination that, Shri Uttam (A. W. 2) did not compel him to marry with applicant and no threat was given to him. The applicant deposed that she cohabited with the non-applicant no. 1 at her matrimonial

house for two months. Therefore it proves that, marriage between the applicant and non-applicant no. 1 was solemnized on 14.12.2014. Therefore, I do not find any substance in the submissions canvassed on behalf of the petitioners.

15. Sec. 2 (f) of D. V. Act, provides definition of “domestic relation’ means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or family members living together as a joint family. Domestic relationship continues so long as the parties live under the same roof and enjoy living together in a shared household. So where living together has been given up and separate household is established, belongings are removed, domestic relationship comes to an end and relationship of being relatives of each other only survives. Sec. 3 of the D. V. Act, provides that, any form of abuse causing harm or injury to the physical and/or mental health of the woman or compromising her life and safety or any harassment for dowry or to meet any other unlawful demand or issue threats to cause injury or harm.

16. In *D. Velusawy-Vs- D. Patchaiammal, (2010) 10 SCC 469*, the Hon'ble Apex Court has explained the expression 'relationship in the nature of marriage' by observing in para 33 that, relationship in the nature of marriage is akin to a common law marriage. Common law marriages required although not being formally married:

- a) The couple must hold themselves out to society as being akin to pouses.*
- b) They must be legal age to marry*
- c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.*
- d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.*

Therefore, 'relationship' in the nature of marriage under D. V. Act, 2005 must also fulfill the above requirements, and in addition, the parties must have lived together in a 'shared household' as defined in section 2 (f) of the Act.

17. Needless to say, both the Courts below have duly considered the documentary as well as oral evidence available on record and have concurrently held that, on 14.12.2014, the marriage between the applicant and non-applicant no. 1 (husband) was solemnized, and that matrimonial relations between them are still in

existence. However, on 17.07.2015 at about 6:00 p.m., non-applicant no. 1, along with his relatives, visited Nandiwali and demanded ₹2,00,000/-. They stated that the applicant (wife) would not be allowed to cohabit with non-applicant no. 1 unless the said amount was paid. They further threatened that if the money was not paid, they would divorce the applicant and allow non-applicant no. 1 to marry another woman. They also assaulted the applicant. Therefore, the applicant filed a complaint with the Shirur Kasar Police Station.

18. Needless to say, the applicant-wife has no source of income, whereas non-applicant no. 1 (husband) is cultivating joint family land and engaged in the milk business, earning a substantial income of ₹5,00,000/- per year. Therefore, considering the elements of domestic violence as defined under Section 3 of the Domestic Violence Act and the existence of a domestic relationship, the learned Appellate Court, vide its judgment and order dated 11.01.2019, affirmed the judgment and order passed by the learned J.M.F.C. on 14.02.2018, which does not appear to be perverse. Hence, I do not find any substantial grounds to interfere with the findings recorded by both the Courts below.

19. In view of the above discussion, the Criminal Writ Petition is dismissed. Rule is discharged. No order as to costs.

[Y. G. KHOBRADE, J.]

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