



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 102 OF 2023

Malti Shalik Patil,
Age: 60 years, Occ. Housewife,
R/o; Flat No. 12, House No. 453,
Rakesh Nagar, Dr. Zakir Hussien Colony,
Jalgaon.

... APPLICANT

VERSUS

1. Shalik Balu Patil,
Age; 72 years, Occ; Pensioner,
R/o : 12 Rakesh Nagar,
Dr. Zakir Hussien Colony,
Jalgaon.
At present residing at Vrudhashram,
Pimprala Shivar, Jalgaon.

2. State of Maharashtra.

...RESPONDENTS

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Advocate for Applicant : Mr. Akshay G. Mularge h/f Mr. Jitendra Vijay
Patil.

Advocate for Respondent No. 1 : Mr. Satej S. Jadhav
Respondent No. 2-State : Ms. A.S. Deshmukh

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CORAM : ABHAY J. MANTRI, J.

DATE : 26.09.2025.

ORAL JUDGMENT :

1. The Original applicant, being aggrieved by the judgment and order dated 13.02.2023 passed by the learned Additional Sessions Judge, Jalgaon, in Criminal Appeal No. 97 of 2022, whereby allowed

the Appeal filed by respondent No. 1 and set aside the Judgment and Order dated 13.07.2022 passed by the learned Magistrate in P.W.D.VA. No. 69/2019 thereby dismissed the Original Application filed by the applicant; hence, the applicant has preferred this Revision Application.

2. Heard the learned Advocate for both parties. Perused the impugned judgment, order, and the evidence on record. I have also gone through the judgments relied upon by the learned Advocates for the parties.

3. At the outset, it appears that the applicant, the wife of respondent No. 1, had filed an application under Section 12 of the Protection of Women from Domestic Violence Act (Hereinafter referred to as the “*DV Act*”) for the grant of various reliefs under the D.V. Act, as prayed in the application. After considering the evidence on record, the learned Magistrate has held that the applicant has proved that respondent No. 1 has committed domestic violence against her. Hence, a protection order was issued in her favour to prohibit the respondent from committing any act of Domestic violence and granted maintenance of Rs. 8,000/- p.m. to her. Also, restraining the respondent from obstructing her from residing in a shared household or driving her out of the house. Further restraint from transferring the said shared household permanently. The Magistrate has also granted compensation of Rs. 50,000/- to the applicant.

4. Being aggrieved by the said judgment and order,

respondent No. 1 has preferred an appeal before the Additional Sessions Judge, Jalgaon, and the learned Additional Sessions Judge, after considering evidence on record, held that the applicant has failed to prove that the respondent has committed any act of domestic violence against her and accordingly allowed the appeal and dismissed the original application. Hence, the applicant has preferred this Revision Application.

5. Learned Advocate for the applicant vehemently contended that the order passed by the learned Magistrate was just and proper; however, the learned Additional Sessions Judge has not considered provisions of the D.V. Act and the evidence on record in proper perspective and erred in passing the impugned order. The learned Additional Sessions Judge has erred in holding that the applicant has failed to prove the domestic violence at the hands of respondent No. 1; on the contrary, the said order is inconsistent with the settled principles of the law. The learned Additional Sessions Judge has erred in discarding the testimony of the applicant on the ground that the applicant has failed to examine the other witnesses in support of her case.

6. To buttress his submission, the learned Advocate for the applicant has relied upon the judgment of this Court (Bombay) in *Kaushal Arvind Thakker Vs. Jyoti Kaushal Thakker, in Cri. Rev. Appli. No. 234 of 2023, decided on 22.03.2024*, he also drew my attention to the findings

recorded by this Court at paragraph No. 73 of the said judgment, as under :-

“In cases of domestic violence, it is not necessary that the acts complained of are required to be substantiated by documentary evidence in the form of medical records or police reports. It is well known that as the marriage is subsisting, more often than not there is no police complaint filed and the physical abuse may not be to such an extent as to require hospitalisation, in which case the medical record would substantiate the abuse.”

7. In paragraph No. 74 of the said judgment, reliance was placed on the decision of ***Aruna Omprakash Shukla Vs. Omprakash Devanand Shukla (2021 SCC Online Bom. 1292)***, where it was held that *“In cases of domestic violence, it is often found that the wife does not immediately rush to the police when inflicted with physical, mental, psychological and economic abuse, and even if such a person suffers injuries, they would not necessarily keep medical records of the same.”*

8. As such, he submitted that in view of the mandate in the said judgment, the order passed by the learned Additional Sessions Judge is improper and contrary to the settled position of the law, and therefore, liable to be set aside. Hence, he urged for allowing an appeal by restoring the judgment and order passed by the learned Judicial Magistrate, First Class.

9. *Per Contra*, learned Advocate for respondent No. 1 has strongly opposed the application, contending that the applicant has failed to prove that respondent No. 1 has committed domestic violence

against her. Therefore, the findings recorded by the learned Additional Sessions Judge are just and proper, and no interference is required. He further drawn my attention to the paragraph Nos. 12 to 21, of the judgment of the appellate Court and submitted that the learned Additional Sessions Judge after considering evidence on record has rightly held that the conduct of the applicant shows that she is not a trustworthy witness and as such, her testimony was discarded and therefore, she propounded that no interference is required in the impugned judgment and order passed by the learned Additional Sessions Judge.

10. To buttress her contention, she has relied upon the judgment of the Hon'ble Apex Court in *Kamlesh Devi Vs. Jaipal and Ors. in Special Leave Petition (Criminal) Diary No (s) 34053 of 2019 decided on 04.10.2019 (S. C.) and also in Shyamlal Devda and Others Vs. Parimala in Criminal Appeal No. 141 of 2020 (Arising out of SLP (Cri.) No. 4979 of 2019) decided on 22.01.2020* and pointed out that the applicant has failed to prove that the respondent No. 1 has committed domestic violence against her and, therefore, the respondent No. 1 is not required to pay maintenance to the applicant. Alternatively, she submitted that the respondent-husband is a handicapped person and consequently urged the dismissal of the petition against him.

11. It is pertinent to note that the respondent No. 1 does not dispute his relationship with the applicant. He is not disputing that he

was an X-military serviceman and was not getting a pension. Similarly, during the cross-examination, he admitted that respondent No. 1 joined the services in Life Insurance Corporation, Bhusaval (for short “*L.I.C*”) and has worked there for 16 years and 5 months. He further categorically admitted that he would get a pension of Rs. 29,434/- p.m from the Army Service and L.I.C. Service. However, he failed to produce any document on record showing how much pension he has received from the Indian Army Service and the L.I.C. Department. In fact, it was incumbent upon the applicant to produce all documentary evidence supporting his defence. The applicant categorically deposed that the respondent NO. 1 is getting Rs. 40,000/- pension from the Military Department and the L.I.C. Department. She produced a Bank Pass Book in that regard, wherein it appears that the respondent No.1 is getting an amount of Rs. 14,551/- from the L.I.C. and Rs. 29434/- from the Indian Army Service. Thus, it is evident that the respondent husband is getting a total amount of Rs. 43,985/- from both services.

12. The next question that arises before the Court is ‘*whether the respondent No. 1 has committed domestic violence against the applicant or not.*’ In that regard, it appears that the learned Judicial Magistrate First Class has considered the said issue in paragraph No. 19 and categorically held that the filing of the divorce petition by the respondent No. 1 itself shows that he has committed domestic violence against the applicant. However, the learned Additional Sessions Judge

has not considered the evidence on record in its proper perspective, and therefore, the findings recorded by the learned Magistrate appear well-reasoned.

13. It is worth to note that the learned Additional Sessions Judge has not considered the definition of the “*Domestic Violence*,” under Section 3 of the D.V. Act, in its proper perspective, and did not consider the mandate in Section 3 of the Act, nor considered definitions of “*aggrieved person*”, *domestic relationship*” and thereby, the learned Additional Sessions Judge has erred in holding that the applicant has failed to prove the domestic violence at the hands of respondent husband. In fact, as observed by the learned Magistrate, the filing of the Divorce Proceeding by the husband itself indicates that the respondent has committed domestic violence against the wife. Apart from this, non-payment of maintenance and the payment of rent related to the shared household, as contemplated under Section 3, Explanation (iv) of the D.V. Act, also amounts to domestic violence. Therefore, it seems that the learned Additional Sessions Judge has erred in reversing the findings recorded by the learned Magistrate. The findings recorded by the learned Additional Sessions Judge appear to be contrary to the mandate of Section 3 of the D. V. Act and the evidence on record. Therefore, the said findings cannot be sustained in the eyes of the law, and the same are liable to be set aside.

14. In *Shamlal* and *Kamlesh Devi* (supra), the Hon’ble Apex Court

has held that, except for the husband and parents-in-law, the application of Domestic Violence filed against the rest of the appellants therein has been allowed. It is observed that “the petitioner and respondents therein are not the persons residing together in a shared household. There were vague allegations that the respondents are family members. There is no whisper of the respondent with the petitioner therein, and they appear to be neighbours.” Therefore, the Apex Court has passed the order. However, the facts in the above two judgments are distinct from the case at hand; consequently, they are hardly of any assistance to the applicant.

15. On the contrary, the observations made in paragraph No. 73 of the *Kaushal* and the decision of *Aruna* referred in paragraph No.74 of the judgment (Supra) are applicable to the case at hand.

16. It is pertinent to note that it is an obligation of the husband to maintain his wife; therefore, he cannot be permitted to plead that he is unable to maintain her due to financial constraint, as he is capable of earning and has sufficient means to maintain her. Moreover, a judicial note can be taken that there are rises in the prices of the essential commodities. Therefore, the maintenance amount granted to the applicant by the Magistrate is not sufficient to satisfy her daily needs, but appears to be too meagre.

17. Apart from that, the provisions of the D.V. Act are social welfare provisions, which must be subjected to an extensive beneficial

concern for the wife. It is to be noted that since 2019, the applicant has not received any amount. The learned Advocate for the applicant also submitted that the applicant has not received any maintenance amount awarded by the learned Magistrate to date. The application was filed in the year 2019. Till this date, the respondent husband has failed to pay a single paisa to the applicant and therefore, in my view, what has been awarded the compensation by the learned Magistrate is just and proper, as the applicant has spent her money and time spent to get her rights enforced before this Court.

18. Thus, on perusal of the record and order passed by the learned Magistrate, as well as the learned Additional Sessions Judge, it appears that the judgment and order passed by the learned Magistrate is just and proper. However, the order of reversing the judgment passed by the learned Magistrate by the Additional Sessions Judge is contrary to the mandate of the provisions of the D.V. Act, as well as to the settled position of law, and therefore, the judgment and order of the learned Additional Sessions Judge are liable to be set aside under the revisional jurisdiction. As such, an interference is required in the impugned judgment and order of the appellate Court.

19. As a result, the judgment and order dated 13.02.2023, passed by the learned Additional Sessions Judge, Jalgaon, is hereby quashed and set aside. The judgment and order passed by the learned Judicial Magistrate First Class are restored.

20. Inform the learned Judicial Magistrate, First Class, as well as the Additional Sessions Court, Jalgaon, accordingly.
21. The Revision Application stands allowed in the above terms and is disposed of.
22. No order as to the costs.

(ABHAY J. MANTRI, J.)

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