



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 112 OF 2023

1. Sumaiyya Begum Mohammad Afroz Saudagar
Age: 34 years, Occu.: Household,
R/o Shahgadh, Tq. Ambad,
Dist. Jalna
2. Musafra Fatima Mohammad Afroz Saudagar
Age: 15 years, Occu.: Mentally retarded and
physically handicapped,
R/o As above
3. Mohammad Afnan Mohammad Afroz Saudagar
Age: 13 years, Occu.: Education,
R/o As above

APPLICANTS

VERSUS

1. Mohammad Afroz Mohammad Akhtar Saudagar
Age: 32 years, Occu.: Business,
R/o Sameer Collector, Near Makka Masjid,
Mominpura Chowk, Beed
2. Mohammad Akhtar Abdul Raheem Saudagar
Age: 53 years, Occu.: Business,
R/o As above
3. Nikhat Begum Mohammad Akhtar Saudagar
Age: 47 years, Occu.: Household,
R/o As above
4. Mohammad Sameer Mohammad Akhtar Saudagar
Age: 24 years, Occu.: Business,
R/o As above

.RESPONDENTS

....
Ms Sheetal Salunke, Advocate for applicants
Mr. S.S. Kazi, Advocate for respondents
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CORAM : ABHAY J. MANTRI, J.
DATE : 24th SEPTEMBER, 2025

ORAL JUDGMENT :

1. The original applicants, i.e. wife and children of Respondent No.1, being aggrieved by the judgment and order dated 13th January, 2023, passed by the learned Additional Sessions Judge-2, Ambad, Dist. Jalna in Criminal Appeal No. 14 of 2021, whereby confirming the judgment and order dated 10th February, 2017, passed by learned J.M.F.C., Ambad, in Criminal Miscellaneous Application No. 271 of 2013, whereby granted maintenance to the applicants to Rs. 2,000/- per month each, has preferred this revision.

2. Heard learned counsel for both parties at length. Perused the impugned judgments and orders as well as the record. Also, gone through the order passed by this Court in *Criminal Revision Application No. 233 of 2018, Sunil Gangadhar Kadam and Others Vs. Jayashri Sunil Kadam and Another*.

3. At the outset, it appears that the applicants have filed this application under Sections 12, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the '*D.V Act*') for the grant of reliefs as prayed. The respondents appeared and filed their say, thereby resisting the application on various grounds. The learned Magistrate, after considering the evidence on record, partly allowed the application, holding that Respondent No.1 is liable to pay maintenance to the applicants of Rs. 2,000/- per month from the date of the order; however, the learned Magistrate has not passed any order in respect of the rest of the reliefs

claimed by the applicants and learned the Appellate Court, while answering the issue nos. 4 to 7 have observed that the amount of Rs. 2,000/- per month each to the applicants, the quantum of amount could have been higher, if the applicants could succeed in bringing documentary evidence as to the income source of the respondent; accordingly, the appeal was dismissed.

4. The applicants and Respondent No.1 challenged the said judgment and order. The learned Additional Sessions Judge-2, Ambad, vide its common judgment and order dated 13th January 2023, dismissed both the appeals. Aggrieved by the same, the applicants have only preferred this revision.

5. Learned counsel for the applicants vehemently contended that the learned trial Court as well as the appellate Court have erred in granting a meagre amount of Rs. 2,000/- per month to each of the applicants when the applicants have produced ample evidence on record to demonstrate that the respondents have two big buildings consisting of showrooms of clothes. He/they also possesses four-wheelers and two-wheelers. However, learned Trial Court as well as the appellate Court have not considered the said evidence on record in its proper perspective. He further emphasised that Applicant No.2 – Musafra is suffering from medical retardation to the extent of 75% disability. Accordingly, he has drawn my attention to the disability certificate (*page no.25*) and other medical documents (*page nos. 26 to 28*) and submitted that the medical papers demonstrate that the Applicant No.2 is suffering from “*Mild fronto-temporal atrophy*” and for its treatment she requires

a larger amount. The learned trial Court has not considered those facts and failed to grant the maintenance under the head '*Medical Expenses*' under Section 20(1)(b) of the D.V. Act, and therefore, urged for allowing the application as prayed.

6. *As against this*, learned counsel for the respondents vehemently opposes the application, contending that the applicants failed to prove that the respondents committed the domestic violence. Therefore, they are not entitled to any relief as claimed. To buttress his submissions, he has relied on the judgment of this Court in *Sunil Gangadhar Kadam* (supra) and pointed out paragraph no.9 of the said judgment and submitted that in view of the order passed in the said revision, the present applicants are not entitled for any relief as they failed to prove domestic violence, and therefore, urged for rejection of the application.

7. It is pertinent to note that the respondents are not disputing their relationship with the applicants. They do not dispute that the applicants reside separately from them. In paragraphs no.3 and 10-A of the say, the respondents categorically admitted that "*Applicant No.2 is physically disabled from birth and deaf and dumb.*"

8. It is worth noting that the trial Court, based on oral and documentary evidence, has held that the relationship of the applicants with Respondent No.1 existed and that Applicant No.1 has been subjected to domestic violence, or the respondents have committed domestic violence

against Applicant No. 1. Therefore, she is entitled to financial assistance. Similarly, the learned Additional Sessions Judge, in paragraph no. 20 of its judgment categorically held that, “*Refusing relationship and evading responsibility by the husband itself establishes the domestic violence against his wife and children. Thus, applicants have established that Respondent No.1 subjected the applicants to domestic violence. As such, they become entitled to seek the relief under the provisions of the D.V Act, and accordingly answered in the affirmative.*” It is to be noted that the respondents have not challenged the findings recorded by the learned Magistrate and Appellate Court. Therefore, the said findings attained finality and are binding on the respondents. On that ground alone, the respondents are not entitled to say that the applicants failed to prove domestic violence. Had it been the fact that the respondents were aggrieved by the findings, then they certainly would have challenged the findings, but none of the respondents challenged them. Since the respondents have no grievance against the said findings, on that ground alone, I do not find substance in the contentions of learned counsel for the respondents that the applicants failed to prove the domestic violence committed against applicant No.1 at the hands of Respondent No.1/ respondents.

9. Perused the decision in ***Sunil Kadam*** (supra). It is pertinent to note that in the said judgment, the definition of ‘*Domestic Violence*’, more particularly Section 3(d) sub-clause (iv), has not been considered. Moreover, the facts in the case at hand and those in the said case are distinct, and

therefore, the observations made in the said judgment are hardly of any assistance to learned counsel for the respondents in support of their contention.

10. While considering the question of domestic violence, I would like to reproduce Section 3 of the D.V. Act as under :-

“3. Definition of domestic violence.—For the purposes of this Act, any act, omission, or commission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coercing her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes physical or mental harm to the aggrieved person.

Explanation I.—For the purposes of this section,—

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of a woman;

(iii) “verbal and emotional abuse” includes—

(a) insults, ridicule, humiliation, name-calling and insults or ridicule, especially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested;

(iv) *“economic abuse” includes—*

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects.....

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship, including access to the shared household.

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.”

11. A plain reading of Section 3(a) and Explanation I (iv) reveals that *“economic abuse includes deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom, which includes payment of rental related to the shared household and maintenance also”*. Undisputedly, in the case at hand, the applicants are deprived of their economic or financial resources. The respondents are not providing any payment for rental or maintenance related to the shared household to the applicants. Therefore, I have no hesitation in holding that the respondents subjected the applicants to domestic violence or that the applicants establish that Respondent No.1/respondents committed domestic violence against them.

12. The next question that arises before this Court is how much Monetary relief under Section 20 of the D.V. Act the applicants are entitled to. It is pertinent to note that the respondents have not denied that Applicant No.2 is a physically disabled, deaf, and dumb. His disability certificate indicates that Applicant No.2 is disabled to the extent of 75% disability. It is also mentioned in the said certificate that the disability is permanent, non-progressive, and not likely to improve. Similarly, the respondents admitted that the said disability has been suffered by Applicant No.2 from birth.

13. Apart from that, the applicants in their application categorically stated that the respondents have two big buildings and two cloth shops, viz. Sami Collection and Saudagar Collection, and the said properties are joint family property of them. It is pertinent to note that Respondent No.1 filed a say to the application and stated that he has no concern with the property mentioned in para 9 of the application. But he has not denied that the said shops and buildings are owned and possessed by the rest of the respondents. The rest of the respondents have filed a reply but have not replied to paragraph 9 of the application, and the contents of paragraph 9 remain unchallenged. The aforesaid contentions of the applicant and Respondents indicate that Respondent Nos. 2 to 6 possess the said properties.

14. It is pertinent to note that the husband's obligation is to maintain his wife and children. He cannot be permitted to plead that he is unable to

maintain them due to financial constraints as long as he is capable of earning. It is to be noted that the husband is duty-bound to fulfil their day-to-day needs and to provide a maintenance amount to them to live their life as per his living standard. In such an eventuality, it is necessary to grant maintenance to them. As observed above, the applicant has sufficient means to earn the money. *Besides*, judicial notes can be taken that there is a rise in the prices of essential commodities. Therefore, the maintenance amount granted to the respondents also appears to be too meagre to satisfy their daily needs, payment of rental related to the shared household, and medical expenses. As Respondent No.1 himself has admitted that Applicant No.2 is physically disabled and deaf and dumb, therefore, it can be inferred that she requires medical treatment.

15. Learned trial Court as well as the appellate Court, while considering the question of grant of rental payment related to the shared household, have erred in observing that the applicant has adduced no evidence to show that they were residing in rental premises, and therefore, they are entitled to the payment. However, the learned trial Court as well as the appellate Court, have not considered the fact that the applicants are not residing with the respondents, and therefore, in my view, Respondent No.1 is liable to pay the rental payment related to the shared household as contemplated under the Act. Even otherwise, if the accommodation is not provided or the applicants are not permitted to reside in the shared

household, in my view, the applicants are entitled to the payment towards rent of Rs. 10,000/- per month.

16. Having considered the above discussion, it appears that the learned trial Court as well as the appellate Court have erred in refusing to grant rent under the provisions of Section 19 of the D.V. Act to Applicant No.1. Therefore, the said finding is liable to be set aside in the revision. On the contrary, it appears that the applicants are entitled to the alternate accommodation or to pay the rent for the same @ Rs. 10,000/- per month.

17. The trial Court as well as the appellate Court have ignored the fact that Respondent Nos. 2 to 4 hold and possess the landed properties, i.e. buildings, cloth shops, four wheelers, and two wheelers. Similarly, it has come on record that Respondent No.1 is an able-bodied person with sufficient means to earn the money and pay the maintenance to the applicants. On the other hand, the respondents failed to point out that Respondent No.1 does not have sufficient means to maintain the applicants, or the findings recorded by the learned trial Court, as well as the appellate Court, are perverse. Therefore, having considered the fact that Applicant No.2 is physically disabled to the extent of 75% and deaf and dumb, for which, medical treatment is required to her as well as inflationary cost of living has been increased and same will continue, and therefore, in my view all the applicants are entitled to maintenance @ Rs.10,000/- per month each applicants from Respondent No.1.

18. Though Respondent No.1 claimed that he is working in the cloth shop, considering the fact that Respondent Nos. 2 to 4 have possessed two stored buildings as well as two cloth shops, and therefore, have sufficient means of income. Merely non-production of the evidence by the applicants about his income does not mean that the applicants failed to prove the income of Respondent No.1. It is to be noted that the husband was always aware of his income. He had to lead the evidence in that regard, but he willfully did not adduce any evidence supporting his defence. In such circumstances, the testimony of the wife that the husband is earning a certain income needs to be accepted. Therefore, in my view, Respondent No.1 is able-bodied and has sufficient means of income to pay the maintenance of Rs. 10,000/- per month to each applicant, as they are also entitled to live their lives per the standard of living of the respondents.

19. To sum up the above discussion, it is apparent that Respondent No.1 failed to maintain the applicants when he had sufficient means of income to maintain them as well as to provide rent for their accommodation as per his standards of living. Similarly, the learned trial Court as well as the appellate Court has ignored the provisions of D.V. Act as well as the evidence on record in its proper perspective and erred in discarding to grant of amount towards payment of rent under Section 19(f) as well as maintenance under Section 20(1)(d) of the D.V. Act, however the applicants are entitled to the alternate accommodation or the rent for the same @ Rs. 10,000/- per month

and towards maintenance Rs.10,000/- per month to each applicants, and therefore, to that extent the judgment and order passed by the trial Court needs to be modified.

20. As such, the Revision application is partly allowed, and the judgment and order of the trial Court are modified as observed above in para 19.

21. Inform this order to the trial Court as well as the appellate Court. The revision application is disposed of accordingly.

(ABHAY J. MANTRI, J.)

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