



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

51 CRIMINAL WRIT PETITION NO. 826 OF 2019

BALASAHEB S/O NAGNATH KHARADE
VERSUS
USHA @ LALITA W/O BALASAHEB KHARADE

Mr. V.M. Maney, Advocate for the petitioner.

Mr. Krushna N. Bhosale h/f. Mr. A.T. Kanawade, Advocate for the respondent.

CORAM : KISHORE C. SANT, J.
DATE : 30.07.2025

PC :-

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

02. The petitioner No.1 happens to be husband of the respondent. Petitioner No.2 is father of petitioner No.1. The petitioners have come to this Court challenging judgment and order passed by the learned Additional Sessions Judge, Latur dated 12.03.2019, passed in PWDV Appeal No. 46 of 2015, thereby partly allowing the appeal filed by respondent-wife and setting aside the judgment and order passed by the learned JMFC, Ausa, Dist. Latur dated 04.11.2015 in Criminal Misc. Application No. 22 of 2013. It is directed to pay an amount of Rs. 1000/-

per month towards maintenance, Rs. 500/- per month towards house rent, Rs. 1000/- towards proceeding costs and Rs. 15,000/- towards compensation to the wife. It is further directed to the petitioner to restrain from committing acts of domestic violence.

03. The wife had filed application under section 12 of the Domestic Violence Act. It is her case that the parties married on 05.10.2003. The father of the wife spent huge amount in the marriage and gave Rs.80,000/- and 20 grams gold in dowry with some utensils to the husband. After one year of the marriage, it is alleged that the in-laws started harassing the wife, saying that they did not get sufficient amount in dowry. It is alleged that she was kept starved. She was given shock by gas lighter. She was always threatened by showing revolver. She was also given threats that she will be set on fire. It is alleged that on 13.07.2008 the in-laws assaulted her mercilessly and it was tried to set her on fire. She could escape herself with great difficulties from the in-laws and since then she is living with her parents. There were attempts to see that the parties co-habit together. However, in the settlement meetings also there was no response from the in-laws and they demanded some amount for settlement. She was required to file complaint under section 498-A of the Indian Penal Code bearing RCC

No.36 of 2009. On such allegations, she prayed for various reliefs including share in the property.

04. The learned JMFC on recording evidence rejected the application. It is held, on the basis of the evidence, that the wife is staying with her parents since 28.09.2005 and since thereafter they have never stayed together. There is already divorce given by the husband by filing HMP No. 47 of 2008. Thus, on the date of filing the HMP proceeding, there was no domestic relationship. On this count the complaint came to be rejected. The learned Sessions Judge, however, partly allowed the revision. It is observed by the learned Sessions Judge that mere admission of wife and her father in the cross-examination is not sufficient to disbelieve the pleading of wife. The wife would not leave house of her husband without any compelling circumstances. He thus allowed the appeal partly.

05. Learned Advocate Mr. Maney for the petitioners vehemently argued that the learned Sessions Judge has committed serious error by allowing the appeal and by setting aside the well reasoned judgment of the learned JMFC. He submits that when there is overwhelming evidence on record to show that since 28.09.2005, there is no co-habitation and

the parties are admittedly residing separately, there is no question of granting any relief. The finding of the learned Sessions Judge are perverse and requires to be set aside.

06. Learned Advocate for the respondent Mr. Bhosale vehemently opposes the petition. He submits that the Domestic Violence Act is a piece of welfare legislation. It is aimed at providing relief to women. Learned Sessions Judge has rightly appreciated that mere admission by wife would not disentitle her from praying for any relief. Learned Advocate for the respondent relies upon judgment of the Hon'ble Supreme Court in the case of **Juveria Abdul Majid Patni Vs. Atif Iqbal Manoori and Anr., reported in 2015 ALL M.R. (Cri) 2912** and judgment of the Calcutta High Court in the case of **Sri Krishnendu Das Thakur Vs. TheState of West Bengal & Anr. (CRR 3566 of 2018)**.

07. This Court has heard the parties and seen that in the judgment, the learned JMFC has clearly observed that the parties are residing separately since 2005, no reason is coming from the wife as to why she started residing separately. It is further observed that though in her application, she has quoted incident of 13.07.2008, it is admitted fact that on that day she was staying with her parents. The learned JMFC

discussed the evidence wherein wife and her father admitted that she is staying separate. It is also considered that there is divorce between the parties. Learned Sessions Judge, however, has observed that such admission would not affect the case of the wife. He drawn inference that no wife would leave husband's house without compelling circumstances. However, no such circumstance is shown by the wife as discussed by the learned Sessions Judge. On the face of it, it is clear that no act of domestic violence is proved. The husband and in-laws are even acquitted from the offence under section 498-A of the IPC. The learned Sessions Judge has even failed to appreciate in proper perspective that the decree of divorce is ex-parte decree and therefore the Court did not give much importance to the decree. It needs to be seen that ex-parte decree of divorce is not challenged by the wife. As of now it is informed that the wife has performed second marriage in 2021.

08. In the present case it is clearly seen that the wife has utterly failed to prove any single incident of domestic violence. It is also a matter of record that since 2005, she is residing separately. In her application, she has quoted the incident of the year 2008. In such circumstances, the learned Sessions Judge has certainly committed mistake in allowing the appeal.

09. Therefore, The impugned judgment and order dated 12.03.2019 passed by the learned Additional Sessions Judge, Latur in PWDV Appeal No. 46 of 2015 is set aside.

10. The Criminal Writ Petition is accordingly allowed and is disposed off with no order as to costs.

[KISHORE C. SANT, J.]