



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 91 OF 2021

1. Jyoti Shrirang Pathade.
Age; 32 years, Occ; Housewife,
2. Vaishnavi d/o Shrirang Pathade,
Age; 10 years Occ. Education,
Under Guardianship of Applicant No. 1.

Both R/o; Karegaon,
Tq.Shrirampur, Dist. Ahmednagar.

...APPLICANTS
(Orig. Complainants)

VERSUS

1. Shrirang Kacharu Pathade,
Age; 37 years, Occ; Agri and Labour,
2. Kachru Murlidhar Pathade,
Age; 70 years, Occ; Agri ... (DIED HENCE
ABATED)
3. Kesharbai Kachru Pathade,
Age; 64 years, Occ; Agril,
4. Arun Kacharu Pathade,
Age; 42 years, Occ; Agril, ... (DELETED)

All R/o; Goyegaon, Tq.Vaijapur,
District: Aurangabad.

...RESPONDENTS
(Orig. Respondents)

...

Advocate for Applicants : Mr. Mahesh K. Bhosle
Advocate for Respondent Nos. 1 & 3 : Mr. Shejwal Arun S.

...

CORAM : ABHAY J. MANTRI, J.
DATE : 01.10.2025.

ORAL JUDGMENT :

1. The applicants, i.e. wife and daughter of respondent No. 1, being aggrieved by the judgment and order dated 04.03.2021 passed by the learned Additional Sessions Judge, Shrirampur, in Appeal No. 02 of 2015, whereby, confirming the judgment and order dated 19.01.2015 passed by the learned Judicial Magistrate, First Class, Shrirampur in Criminal Misc. Application No. 111 of 2011, thereby partly allowed the application and directed the respondent No. 1 to pay maintenance of Rs. 1000/- p.m. to the applicant No.2 only, have preferred this application.

2. Heard the learned Advocate for the applicants and respondents. Perused the impugned judgments and orders as well as the record. I have also perused the judgments relied upon by the learned Advocates for the respective parties.

3. It appears that during the pendency of the application, respondent No. 2 died, hence the application was abated against him by order dated 21.04.2022. Also, respondent No. 4 was deleted vide order of this Court dated 21.11.2022.

4. At the outset, it appears that the applicants, i.e., the wife and daughter of respondent No. 1, filed an application under Section 12 of the Protection of Women from Domestic Violence Act (for short, the

“*D.V Act*”), claiming the relief of maintenance of Rs. 10,000/- p.m. each along with other reliefs.

5. The respondents appeared in the matter and resisted the application on the grounds that they had not committed any domestic violence against the applicants, but the applicant No. 1 herself had left their house without any reason. Respondent No. 1 had issued notice to the applicant No.1-wife for restitution of conjugal rights, and filed the petition, which was allowed. Similarly, respondent No. 1 has no sufficient means of income to pay maintenance, so they prayed for dismissal of the application.

6. After considering evidence on record, the learned Magistrate has held that the applicants failed to prove that the respondents had committed domestic violence against them and therefore, only granted maintenance of Rs. 1,000/- to the applicant No. 2. Being aggrieved by the said order, the applicants have preferred an appeal before the Additional Sessions Judge. The additional Sessions Judge, Shrirampur, vide its judgment and order dated 04.03.2021, dismissed the appeal and confirmed the judgment and order passed by the learned trial Court. Hence, the applicants have preferred this Revision Application.

7. Learned Advocate for the applicants vehemently contended that the learned Magistrate as well as the appellate Court have erred in holding that the applicants have failed to prove that the respondents have committed domestic violence against them. As per the definition of 'Domestic Violence', respondent No. 1 is required to pay maintenance and payment of rent for the accommodation to them when they are residing separately, but the learned Court below have erred in rejecting the said application, holding that no Domestic Violence has been committed against the applicants. Secondly, he canvassed that mere filing of the petition for restitution of conjugal rights is not sufficient to draw an inference that the applicants were negligent and not ready to reside with the husband. However, the husband, i.e., respondent No.1, is required to execute the decree of restitution of conjugal rights, so it can only be said that respondent No. 1 intends to cohabit with the wife. In the absence of the filing of execution proceedings, it cannot be said that the applicants were not ready to cohabit with respondent No. 1. Thirdly, he propounded that respondent No. 1 does not dispute that the applicant No.1 is his wife and applicant No. 2 is his daughter. Similarly, they are residing separately, and therefore, he urged that mere filing of the application under the provisions of the Domestic Violence Act is sufficient to draw the inference that the respondents have committed domestic violence against the applicants.

8. To buttress his submission, he has relied on the judgments of this Court in *Mrs. Lata Vishwanath Gawade Vs. Vishwanath Jayawant Gawade and Anr. 2008 (5) AIR Bom R 585*, and *Hema Rawal & Anr. Vs. Prashant Sharma- 2015 ALL MR (Cri) Journal 244* and urged for allowing the application by setting aside the orders passed by both the Courts below.

9. On the contrary, the learned Advocate for the respondents strenuously argued that the judgments and orders passed by the learned Magistrate and the appellate Court are just and proper and no interference is required in them. It is argued that the applicants have failed to prove that the respondents have committed domestic violence against them, and therefore, they are not entitled to relief under the provisions of the D.V. Act.

10. During the argument, the learned Advocate for the respondents has drawn my attention to paragraph Nos. 8 to 11 of the judgment of the learned Magistrate and paragraph Nos. 18 and 20 of the judgment of the learned Additional Sessions Judge. He further canvassed that respondent No. 1 has filed a petition for restitution of conjugal rights and the same was decreed, despite the said fact applicant No. 1 along with applicant No. 2 did not go to cohabit with respondent No. 1 and therefore, the learned Magistrate as well as the learned appellate Court have rightly held that the applicants have failed to prove that the respondents have committed domestic violence against

them.

11. In support of his submission, he has relied on the decision of this Court in *Koushik S/o Anil Gharami Vs. Sau Sangeeta Kaushik Gharani and others, Criminal Writ Petition No. 32 of 2014, decided on 05.05.2014* and pointed out paragraph Nos. 8 and 10 of the said judgment and submitted that in view of the observations made in the said judgment if applicants failed to prove that the domestic violence committed by the respondents against them then they are not entitled to any relief under the provisions of the D.V. Act, hence he urged for dismissal of the application.

12. It is pertinent to note that respondent No. 1 does not dispute that the applicant No. 1 is his wife and applicant No. 2 is his daughter. Similarly, they are residing separately; he has not provided any amount of maintenance to them for their livelihood, which he owes to maintain them.

13. The sum and substance of the argument of the learned Advocate for the respondents was that the applicants have failed to prove that the respondents have committed domestic violence against them. While dealing with the said point, I have gone through the pleadings in the original application. It appears that in paragraph No. 2 of the application, the applicants have categorically stated that the respondent No. 1 used to doubt the character of the applicant No. 1 and

therefore, he was harassing her. Also, respondents No. 2 to 4 were beating her at the instigation of respondent No. 1. They were not treating her well and therefore, due to their ill-treatment and harassment, she left their house. Thereafter, her health deteriorated, and when she came to her maternal house for delivery, respondent No. 1 had abused herself and her father. The respondents did not categorically deny all these allegations made by the applicant No. 1, in their reply to the said application. Applicant No. 1 reiterated the contents of the application during her evidence. During the evidence, respondents have not categorically put suggestions to her in that regard, nor even vaguely denied the testimony of the applicant No. 1 on the above point. Hence, there is no reason to disbelieve the contents of the application or the testimony of the applicant No.1 filed in that regard.

14. While dealing with the issue as to whether the domestic violence has been committed against the applicants or not, it would be appropriate to reproduce the definition of domestic violence here, which reads as follows:

“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)

(c)

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

(i) "physical abuse" means

(ii) "sexual abuse".....

(iii) "verbal and emotional abuse" includes--

(a)

(b);

(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

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."

15. On bare perusal of the said definition, it reveals that if the aggrieved person is deprived of any economic and financial resources to which they are entitled under any law or custom, and non-payment of the same, amounts to 'economic abuse'. However, the learned trial Court and the Appellate Court have not considered the mandate under Section 3 of the D.V. Act. Similarly, in the judgment in **Kaushik** (supra) this Court has not dealt with the mandate in Section 3 of the D.V. Act but only based on the observations made in the judgment of the trial Court that the aggrieved person could not prove '**domestic violence**' at the hands of the respondents held that the aggrieved person therein failed to prove that respondents have committed domestic violence against them. However, in the case at hand, the facts are distinct from

the said case, and therefore, the observations made in the said judgment are hardly of any assistance to the respondents herein in support of their contention.

16. No doubt, it is not in dispute that respondent No. 1 has filed a petition for restoration of conjugal rights against applicant No. 1 and the same was decreed, even though she did not go to cohabit with him. Both learned courts below gave emphasis on the decree of the restitution of conjugal rights and did not grant maintenance to the applicant No.1. However, they have overlooked that respondent No. 1 has not filed any execution proceedings to execute the said decree for the restitution of conjugal rights. The learned Advocate for the respondents fairly admitted that they have not filed any execution proceeding for the execution of the said decree and therefore, as per the observation made in ***Mrs. Lata Gawade*** (supra), it can be infer from the facts that “*the husband had not bothered to have a decree of conjugal rights executed and the said conduct of respondent No. 1 would indicate his desire merely to defeat the claim of maintenance rather than actually to bring his wife back to the matrimonial home.*” Moreover, in view of the observations made in ***Hema Rawal*** (supra) if the aggrieved persons i.e. Wife and daughter approaches the Court claiming to have been turned out of the shared household and deprived of any financial resources and statutory rights of residence by the wife,

falls under the definition of “*aggrieved person*” and once applicant No. 1/wife approaches the Court claiming that she has been thrown out of the shared household and deprived of any financial resources and deprived from statutory right of residence, it is presumed that mere allegation in the application is sufficient to infer that they are the aggrieved person and were subjected to act of the domestic violence.

17. Considering the above discussion, it is evident that the applicants have proved that the respondents have committed domestic violence against them. Therefore, the findings recorded by the learned trial Court and the Appellate Court are liable to be set aside. Accordingly, I have no hesitation in holding that the applicants have proved that the respondents have committed domestic violence against them.

18. The next question that arises before the court is how much maintenance amount the applicants are entitled to and the compensation amount under Section 22 of the Act. The applicants, in petition and applicant No. 1, in her evidence, categorically stated and deposed that the respondents have agricultural land and respondent No. 1 earns lakhs of rupees from the said land by taking crops of sugarcane and wheat, etc. The said statement was vaguely denied by respondent No. 1. In fact, it was incumbent upon respondent No. 1 to show how much income he is earning, but not explaining the same or

not producing any document on record to show that how much income he earns, non-producing the same, leads to drawing an adverse inference against the respondents and therefore there is no reason to disbelieve the testimony of the applicant.

19. Apart from the above, respondent No. 1 has not denied that he is not a non-disabled person. Though in his reply, he states that he is doing labour work. However, in his cross-examination, he admits that he and his father possess 4 acres of land. They used to take cotton and wheat crops. Moreover, the learned trial Court and the appellate Court have not discussed in detail the income of respondent No. 1. The learned appellate Court held that the applicant failed to establish her case of Domestic Violence and therefore held that she is not entitled to the reliefs. However, on believing the testimony of respondent No.1, it was held that applicant No.2 is entitled to the maintenance of Rs. 1,000/- only. In fact, it was incumbent on them to deal with the income of the respondent No. 1 and the entitlement to the quantum of the maintenance by the applicants.

20. In addition, it is a settled position of law that it is an obligation of the husband to maintain his wife and children, and he cannot be permitted to plead that he is unable to maintain his wife and children due to his financial constraint, as long as he is capable of earning money. Furthermore, a judicial note can be taken that there is a

rise in prices of the essential commodities, and therefore, the maintenance amount granted to applicant No. 2 appears to be too meager to satisfy her daily needs. Besides, applicant No. 2 is 15 years old. Therefore, having considered non-specific denial by respondent No. 1 about having agricultural land, leads to draw an adverse inference and also non furnishing the details of his income lead to draw an adverse inference that he is able bodied person and capable of earning, therefore, considering the inflationary costs of living and the aspect of education of applicant No. 2, and their continued reliance on maintenance as the sole means of financial support necessitate a reassessment of the maintenance amount, in such an eventuality, it would be appropriate to grant maintenance of Rs. 10,000/- p.m., each, to applicant No. 1 and applicant No. 2, to both. Apart from the above, the Hon'ble Supreme Court in *Rakhi Sadhukhan V. Raja Sadhukhan* held that the maintenance amount shall be subject to an enhancement of 5% every two years to ensure financial stability for the wife and daughter.

21. The next point for determination is how much compensation the applicants are entitled to under Section 22 of the D. V. Act. It is undisputed that since 2011-12, the applicants have been residing separately and living their lives. Applicant No. 2 is now approximately 14 years old. Respondents have not provided any financial assistance to them since 2011. Similarly, as respondent No.1

has not provided maintenance to them as such, the applicants had to approach the learned Magistrate, the learned Sessions Court, and this Court, and therefore, incurred expenses and consequently, I am of the view that they are entitled to compensation of Rs. 50,000/-. *It is made clear that the amount of maintenance includes the amount of rent payable to the applicants.*

21. Thus, on perusal of the impugned orders, it appears that the learned Magistrate as well as the learned Sessions Court have erred in holding that the applicants have failed to prove the domestic violence committed by the respondents against them; therefore, the said findings cannot be sustained in the eyes of the law and are consequently liable to be set aside. Similarly, the learned Magistrate as well as the learned appellate Court have not considered the income of respondent No. 1, Applicant No. 2 is now approximately 14 years old in its proper perspective, nor granted maintenance to applicant No. 1 and adequate maintenance to the applicant No.2. Likewise, Now the applicant No. 2 is approximately 14 years old and pursuing her education, therefore, in view of the above discussion the said order is liable to be set aside as the applicants have proved that respondent No. 1 has caused domestic violence.

23. Based on the findings of the learned Magistrate and the learned appellate Court, the judgments cannot be sustained in the eyes

of the law. Therefore, the same are liable to be set aside under the revisional jurisdiction.

24. As a result, this Revision Petition is allowed, and the application filed by the applicants before the learned Magistrate is hereby partly allowed.

25. Respondent No. 1 is liable to pay maintenance of Rs. 10,000/- (Ten thousand) each, to the applicant No. 1, Jyoti Shrirang Pathade, and applicant No. 2, Vaishnavi Shrirang Pathade, till she attains the majority, from the date of filing of the application before the learned Magistrate. ***It is made clear that the maintenance amount shall be subject to an enhancement of 5% every two years from this order.***

26. Respondent No. 1 shall pay compensation of Rs. 50,000/- (Fifty Thousand) to the applicants, within 8 weeks from today, failing which, compensation carries interest @ 6% thereafter.

27. The Criminal Revision Application is disposed of in the above terms. The application, if any pending, is disposed of accordingly.

(ABHAY J. MANTRI, J.)