



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 198 OF 2024

Sudhakar Vitthal Bocharé,
Age : 37 years, Occu. : Service,
R/o. N-12, D 25/6,
Swami Vivekanand Nagar, HUDCO,
Chh. Sambhajinagar (Aurangabad).

... Applicant
(Orig. Non - Applicant)

Versus

Sau. Priyanka W/o. Sudhakar Bocharé,
(Priyanka Jagannath Kolte),
Age : 31 years, Occu. : Service,
R/o. C/o. Jagannath Kolte,
A 4/3, Mayur Park, HUDCO,
Chh. Sambhajinagar (Aurangabad).

... Respondent
(Orig. Applicant)

.....

Mr. Tushar C. Shinde, Advocate for Applicant.

Mr. Navin Shah h/f. Mr. Swapnil S. Patil, Advocate for Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

DATED : 20th MARCH, 2025

ORDER :

1. Section 397 read with section 401 of the Code of Criminal Procedure are invoked by original non applicant husband, assailing the judgment and order dated 27.06.2024 passed by learned Additional Sessions Judge, Chhatrapati Sambhajinagar in PWDVA Appeal No. 63 of 2023 arising out of judgment and order passed by learned J.M.F.C. Aurangabad in PWDVA Application No. 456 of 2018 dated 31.03.2023.

2. Learned counsel, who also placed written arguments on record would submit that, undisputedly parties are husband and wife. That, there is no dispute that respondent wife instituted proceedings before learned Magistrate vide PWDVA Application No. 456 of 2018 alleging maltreatment, cruelty, ill treatment and she set up prayers for protections orders, directions, compensation. That, primarily allegations were regarding force to work on field like labour. That, there were general and omnibus allegations of physical assault on 13.10.2017 and further claimed that there was termination of pregnancy due to said beating. However, according to learned counsel for revisionist, such claims were not substantiated and therefore learned J.M.F.C. rejected the application for want of merits. That, respondent wife preferred appeal bearing PWDVA Appeal No.63 of 2023 challenging the order of trial Judge.

3. It is further submitted that, first appellate court interfered by overturning the findings reached at by learned trial court, however, no legally acceptable and sound reasons were assigned for interfering in appeal. According to learned counsel, judgment of first appellate court was based on conjectures and surmises. He emphasized that, first appellate court contradicted its own findings by

holding that wife was unable to prove occurrence dated 13.10.2017, but in the same breath held that evidence adduced by respondent wife is sufficient to attract rigors of domestic violence. In fact, there was no cogent and reliable evidence, even about neglect, entitlement of maintenance and house rent. That, learned first appellate court failed to appreciate that wife was already beneficiary of maintenance in other court proceedings.

4. Learned counsel further pointed out that, wife in her pleadings failed to plead and contend that she suffered mental stress resulting into abortion, but surprisingly in absence of such pleading learned first appellate court granted maintenance. According to learned counsel, learned first appellate court ought not to have traveled beyond pleadings.

5. Lastly it is pointed out that, apart from previous maintenance by virtue of appellate court order, respondent wife would get additional amount of Rs.8,000/- i.e. towards maintenance and house rent, and thus would be receiving Rs.23,000/- out of his salary which is his sole source of income and in spite of having other family responsibilities.

Consequently, for above reasons, learned counsel seeks indulgence for setting aside the judgment and order passed by learned Additional Sessions Judge dated 27.06.2024 by allowing the revision.

6. Learned counsel for respondent wife opposed by placing on record affidavit-in-reply supporting the learned appellate court's order and criticized the learned trial court's order. Contentions raised in both proceedings regarding cruelty, ill treatment, demand and physical violence being inflicted on her resulting into abortion are reiterated. It is thus submitted that domestic violence has been substantiated and first appellate court has considered no error whatsoever in accepting the case and granting relief and thereby prayed to dismiss the revision.

7. Heard. Perused the papers including petition filed by wife before learned J.M.F.C., say of revisionist husband Exh.34, order dated 31.03.2023 of learned trial court as well as appeal memo and grounds raised therein by present revisionist husband. Also perused the impugned judgments of both, trial court and first appellate court.

In the judgment dated 31.03.2023, learned trial court has discussed the counter case and its reasoning commences from

paragraph no. 9 onwards and in paragraph nos. 28 to 31 has dealt with the assertions of domestic violence and finally in paragraph nos. 30 and 31 recorded a finding that applicant wife failed to substantiate the domestic violence. While dealing with neglect entitlement of maintenance and compensation, discussions are made in point nos.2 to 5 commencing from paragraph no. 32 onwards and has also taken recourse to judgment of Hon'ble Apex Court in the case of ***Kalyan Dey Chowdhury vs Rita Dey Chowdhury Nee Nandy*** in Criminal Appeal No. 5369 of 2017, trial court had concluded that applicant wife failed to make out case for entitlement of compensation and protection orders etc. and ultimately dismissed the application.

8. On going through the judgment of learned first appellate court at (Exh.E) dated 27.06.2024 in PWDVA Appeal No. 63 of 2023 it is noticed that after formulating six points, cases of each side are re-appreciated and reanalyzed and more particularly in paragraph no.14 which deals with allegations of physical violence, learned appellate court has taken into account the evidence of treating Doctor Smita Kanthale and has held that even if no marks of beating were noticed on examination conducted on 14.10.2017 regarding alleged violence dated 13.10.2017 as claimed by wife, her evidence is sufficient to prove domestic violence.

It is forcefully submitted before this court that above findings are not sustainable, as according to learned counsel, it is evident that there were no marks of violence and therefore finding to that extent is erroneous and self contradictory.

This court does not find any substance and force in above contention. It is not always necessary that marks of violence would appear on mere giving kick. Impact may be on the internal side also. Pain itself is sufficient to bring home the charge, even if there are no visible injuries.

Resultantly, submissions made before this court that as there were no marks of violence noticed by the doctor and therefore assertions of physical violence are patently false, has no force and substance. Every physical violence may not yield marks on the person. Consequently, findings recorded by first appellate court cannot be faulted at.

9. As regards to entitlement of monitory relief is concerned, learned first appellate court has considered the aspect of both parties residing separately. Learned trial court has considered that revisionist being husband has obligation to maintain his wife, who had no

independent source of income and after taking into account salary income of revisionist husband, awarded maintenance at the rate of Rs.5,000/- per month which in current days is the minimum for subsistence and as such cannot be said to be excessive or exaggerated. Even the quantum of Rs.3,000/- per month for rent for shelter is justified.

10. Therefore, in the considered opinion of this court, the points agitated before this court that learned trial court having rejected the claim by assigning sound reasons ought not to have been interfered by the first appellate court are baseless. In fact, learned trial court has not appreciated the evidence of respondent wife in correct perspective and has not considered the evidence adduced in trial court in the light of legal requirements and therefore interference caused by first appellate court cannot be faulted at. There is no case for interference in revision.

11. The revision application stands dismissed.

[ABHAY S. WAGHWASE, J.]