



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

CRIMINAL APPLICATION NO. 3376 OF 2024

1. Satish s/o. Bhagwan Choudhary,
Age 39 years, Occu. Service,
2. Bhagwan s/o. Babulal Choudhary,
Age 60 years, Occu. Retired,
3. Kalpana w/o. Bhagwan Choudhary,
Age 55 years, Occu. Housewife,
4. Santosh s/o. Bhagwan Choudhary,
Age 35 years, Occu. Service,

All R/o. House No.121, P & T Colony,
Ratlam, Taluka Ratlam, District Ratlam
(Madhya Pradesh)

.. Applicants

Versus

Swati w/o. Satish Choudhary,
Age 30 years, Occu. Private Job,
R/o. C/o. Rama Kisshan Choudhary,
Choudhari Press, Pimprala, Pandhari Plot,
Prashant Chouk, Pimprala, Taluka Jalgaon,
District Jalgaon

.. Respondent

Mr. A. D. Khot, Advocate holding for Mr. Nitin S. Salunke, Advocate
for Applicants;

Mr. P. B. Kulkarni, Advocate for Respondent (appointed)

CORAM : KISHORE C. SANT, J.

DATE : 01-07-2025

PER COURT:-

1. Heard the learned counsel for the parties.
2. This criminal application is filed seeking quashment of the
proceeding of P.W.D.V. Application No.182 of 2023 pending before

the learned Judicial Magistrate First Class, Jalgaon. The proceeding is initiated by the respondent/wife for the reliefs under Sections 12, 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005.

3. Applicant No.1 is the husband of respondent/wife. Applicants No.2 and 3 are the parents and applicant No.4 is the brother of applicant No.1.

4. It is the case of the applicants that the marriage between applicant No.1 and the respondent took place on 16.03.2021 at Ratnapuri, District Ratlam (Madhya Pradesh). Immediately on the next date i.e. on 17.03.2021, applicant No.1 noticed abnormal behaviour of the respondent. The respondent was, therefore, immediately taken to a Psychiatric for examination. The Psychiatric, on examination, opined that the respondent is mild mentally retarded and on the verge of total retardation. On that, applicant No.1 filed a proceeding bearing Hindu Marriage Petition No.233 A of 2021 seeking declaration that the marriage is null and void as the respondent was not in a condition to give consent. The said suit was decreed *ex parte* on 15.02.2022. The marriage was declared null and void and was dissolved, accordingly. The wife filed complaint/instant application on 21.08.2023. Thus, it is the case of the applicants that no proceeding is maintainable after more than a year after dissolution of marriage.

5. Learned counsel for the applicants vehemently argued that under such circumstances, continuation of the proceedings would be clearly an abuse of process of law. In support of his submission, he relied upon a judgment in the case of *Smt. Sadhana w/o. Hemant Walwatkar vs. Hemant s/o. Shalikramji Walwatkar, 2019 All MR (Cri) 2299* and prays for allowing the application.

6. Learned counsel for the respondent vehemently argued that decree of dissolution of marriage is *ex-parte*. No sufficient opportunity was provided to the respondent. He invites attention to paragraph No.7 of the judgment by the Family Court at Ratlam (M.P.), showing that the matter proceeded *ex-parte*. He further submits that though there is a decree by the Civil Court, the application can be maintained. It is not necessary that the marriage must be in existence. What is required to be seen is that the complainant was in domestic relation with and person against whom the application filed and they shared common household. He, thus, prays for rejection of application.

7. Heard both the sides. Perused the record.

8. After going through the record, it is clearly seen that the divorce had taken place and the marriage was declared as null and void on 15.03.2025 by the Court of competent jurisdiction. As on today, neither an appeal is filed nor an application is filed for setting aside *ex-parte* judgment. The decree is, thus, in existence

as on today. The application under Domestic Violence Act is filed on 21.08.2023. It is clear from the record that on the date of filing of D.V. application, there was no relationship in existence between the parties.

9 In the judgment of *Smt. Sadhna (supra)*, this Court in paragraph No.10 has observed as under;

“10. There is no dispute that the applicant/wife is no more wife from the decision of family Court in Petition No. A-410/2004 dated 30th June, 2008. The said decision is not set aside by the appellate Court 8 revn121.18 till date. Therefore, it is clear that at the time of filing of petition under the provisions of DV Act in the year 2009, the applicant was not the wife and, therefore, the petition itself was not maintainable. This Court, in the case of Jayesh Uttamrao Khairnar and others .v. State of Maharashtra and others (reported in 2010(3) Mh.L.J., 305), has held that, "decree of divorce was already granted by the competent Court. During the relevant period of one year or before filing of the application under the Act, there was no conjugal relationship between the petitioner No.1-husband and the respondent No.2-wife. There was no question of giving protection to respondent No.2 when she was not residing with the petitioners. Case of respondent No.2 did not fall under Section 20(1) of the Act. In view of absence of domestic relationship of the respondent No.2 as on the date of filing of the complaint, proceedings under the Act were not maintainable and were filed with mala fide intention to harass the husband and his relatives. Proceedings quashed and set aside.”

10. This Court finds that the facts are identical. In the present case also on the date of filing of application itself there was no marital relationship between applicant No.1 and respondent in existence. Though it is tried to be submitted by the learned

counsel for the respondent that the decree is *ex-parte* and without giving proper opportunity to the respondent, the same cannot be accepted. What is material is that the decree for dissolution of marriage was already passed. There is no legal relationship between parties. No case is made out though the parties were residing different.

11. Considering all above, it is clear that continuation of proceeding of P.W.D.V. Application No.182 of 2023 would be clearly an abuse of process of law.

12. In view of the above, this Court has no hesitation in allowing criminal application. Hence, the order:-

ORDER

- i) Criminal Application is allowed in terms of prayer clause 'B'.
- ii) The proceeding bearing P.W.D.V. Application No.182 of 2023 pending before the learned Judicial Magistrate First Class (Court No.8), Jalgaon, is quashed and set aside.
- iii) Mr. P. B. Kulkarni, learned counsel is appointed for respondent No.2 through the High Court Legal Services Sub Committee, Aurangabad. The Court appreciates his efforts. He shall be entitled to fees as per Legal Aid Rules.

[KISHORE C. SANT]
JUDGE