
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4080 OF 2019

1. Arun Mahdavrao Powar
Age - 55 years, Occu - Nil, R/at -
C/O. Smt. Sudhadevi Shamrao
Chavan, Bungalow No. 5, Right
Flank Line, Wanworie, Pune
Cantonment, Pune- 411 040

2. Sudhir Madhavrao Powar
Age-63 years, Occu- Pensioner,
R/at – 1902, ‘C’ Ward, Laxmi
Road, Somawar Peth, Kolhapur

3. Bharti Sudhir Powar
Age - 52 years, Occu-Household,
R/at- 1902, ‘C’ Ward, Laxmi
Road, Somawar Peth, Kolhapur

Petitioners

Versus

1. Suvarna Arun Powar
Age- 51 years, Occu- Service,
R/at - 858, ‘B’ Ward, Mali Lane,
Raviwar Peth, Kolhapur

2. The State of Maharashtra
Through Public Prosecutor High
Court Mumbai.

Respondents

Mr. Sagar P. Batavia, Advocate for the Petitioners.

Mr. Rishikesh A. Mohite, Advocate for Respondent No. 1.

Mr. Nitin B. Patil, APP for the Respondent No. 2 - State.

CORAM: MANJUSHA DESHPANDE, J.

DATED : 07th JULY 2025

J U D G M E N T

1. Rule. Rule made returnable forthwith, the Writ Petition is taken up for final disposal with consent of the parties.

2. The Petitioners assail the order passed by the Additional Sessions Judge, Kolhapur in Criminal Appeal No. 43 of 2013 dated 30th May 2019, thereby setting aside the judgment and order dated 5th January 2013 in Criminal Miscellaneous Application No. 327 of 2010, passed by the Judicial Magistrate First Class, Court No. 5, Kolhapur.

3. Petitioner No. 1 is the husband of Respondent No. 1, while Petitioner Nos. 2 and 3 are the brother and sister-in-law of the Respondent No. 1. Respondent No. 1-wife had filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short “the D.V. Act, 2005”), praying for protection, residential order, monetary relief and for directions to return the ornaments and articles of the Respondent from the Petitioner-husband herein. The J.M.F.C. Kolhapur has rejected the application of the Respondent on the ground that domestic

violence is not proved against the Petitioners. Since the reliefs claimed by the Respondent No.1 were based on the allegation of domestic violence, and unless the domestic violence is proved, the relief prayed for could not be granted. In view of the failure to prove domestic violence by Respondent No. 1, the application has been rejected vide Order dated 5th January 2013. The order in the application was challenged before the Sessions Court, Kolhapur, by filing Criminal Appeal No. 43 of 2013 by the present Respondent, which came to be allowed by the Additional Sessions Judge, Kolhapur vide Order dated 30th May 2019, directing the Petitioner No.1 to pay monthly maintenance amount of Rs.3,000/- for the maintenance of the Respondent No. 1 from the date of application i.e. 17th April 2010, in view of the provisions of Section 20 of the D.V. Act, 2005. Further direction is given to Petitioner Nos. 1 to 3 to provide shared household to the Respondent No. 1 in CTS No. 1902, 'C' Ward, Somwar Peth, Laxmi Road, Kolhapur, or in the alternate to provide Rs.1,500/- per month for securing rental accommodation for her. There is also an order granting Rs.5,000/- towards the costs of litigation to the Respondent herein.

4. Mr. Batavia, learned Counsel for the Petitioners submits that the marriage of Petitioner No. 1 and Respondent No.1 was solemnized on 22nd August 2008 at Sasne Estate, Timber Market, Kolhapur as per the Hindu rights and rituals. There is no issue out of the said wedlock. The age of Respondent No.1 was above 42 years at the time of marriage. The family members of Respondent No. 1 were aware that the Petitioner No. 1 is not doing any work or business, in spite of that they consented for the said marriage and induced Petitioner No.1 to become a “Gharjamai”. Since the parents of Petitioner No.1 were not alive, Petitioner No.1 agreed to the proposal of Respondent No.1’s family. According to Petitioner No. 1, he was not doing any work and not having financial support for performing marriage and other expenses, he has relinquished his undivided right, title and interest in the ancestral house bearing No.1902, ‘C’ Ward, Laxmi Road Somwar Peth, Kolhapur, by executing a release deed in favour of his elder brother.

5. It is submitted that, when Petitioner No. 1 was residing with Respondent No. 1 in the house of her parents, he noticed that she did not get her ‘menstrual periods’. When he inquired, he got the knowledge that she had already entered into menopause and she is unfit for procreation. He realized that he had been cheated by

Respondent No.1 and her parents; he was shocked; therefore he immediately left the house of the Respondent and came to reside with his brother i.e. Petitioner No. 2 and his wife Petitioner No. 3 herein. Thereafter, Petitioner No. 1 went to Pune to reside with his paternal aunt where Respondent No. 1 followed him and harassed him mentally while residing in the house of his paternal Aunt. Since Petitioner No. 1 could not tolerate her behaviour, he left Pune and went to Gujrat.

6. Petitioner No. 1 filed Petition for divorce before the Civil Judge Senior Division, Kolhapur. Eventually, the Divorce Petition came to be transferred to the Family Court, Kolhapur, which was dismissed on 29th May 2015. Against the dismissal, Petitioner No. 1 has approached this Court and the Appeal has been admitted and is pending consideration before this Court.

7. Respondent No. 1 had filed Criminal Miscellaneous Application No. 327 of 2010, which has been dismissed since she has failed to prove that there was any kind of domestic violence inflicted upon her.

8. Learned Counsel for the Petitioners contends that the J.M.F.C., Kolhapur had rightly taken into consideration that, there

was no occasion for the Petitioners to commit domestic violence, since they have resided for a very few days together. It is rightly observed that the demand of Rs.25,000/- towards dowry is not proved. The J.M.F.C., Kolhapur has rightly refused to rely on the evidence of PW-2 Ramchandra Hari Powar, who was working with the father of Respondent No. 1 and he had cordial relations with in-laws of Respondent No. 1 also. The J.M.F.C., Kolhapur has therefore recorded that Respondent No. 1 has failed to prove *prima facie* case, that she was victimized and ill-treated at the hands of the Petitioners and faced domestic violence. According to the learned Counsel for the Petitioners, the J.M.F.C., Kolhapur has rightly taken into consideration the evidence led by the parties and has passed the appropriate order.

9. Learned Counsel for the Petitioners further contends that, since Petitioner No. 1 was living away from Respondent No.1 in the house of his paternal aunt, there was no occasion for him to subject Respondent No.1 to domestic violence. It is contended that Respondent No.1 was in service in a Pat Sanstha and was earning Rs.10,000/- to Rs. 15,000/- per month. On the contrary, Petitioner No. 1 was unemployed. The fact that Petitioner No.1 was a “Gharjamai” and residing with in the parental house of the

Respondent No.1 has been proved in the evidence through witnesses. All the evidence has been properly appreciated by the trial Court and has passed an appropriate order.

10. It is contended that considering that he was cheated by Respondent No. 1, Petitioner No. 1 did not want to reside with her, therefore, he has already filed a Divorce Petition, hence there was no question of subjecting the Respondent to any domestic violence. It is contended that, when categorical stand has been taken by Petitioner No. 1 that, he was not earning a single farthing while settling the marriage, the Respondent and her father were given to understand about its, who have readily accepted unemployment of Petitioner No. 1.

11. In view of the factual position, the Sessions Court is not justified in granting an amount of Rs.3,000/- for maintenance of Respondent No.1 and the order also to provide shared household in the ancestral house belonging to the family of the Petitioners at Kolhapur is also unwarranted, in view of the fact that he had already relinquished his share in the shared house prior to his marriage with Respondent No. 1, therefore, no such direction could have been given by the Additional Sessions Judge,

Kolhapur. According to him, therefore the Writ Petition deserves to be allowed. Considering that Petitioner No. 1 has been cheated by Respondent No. 1 as she was unfit for procreation and the said fact was suppressed by her, she does not deserve any order for protection or maintenance.

12. Since there was no domestic violence, the question of any other relief such as protection order, residential order or any maintenance does not arise. According to him, the order passed by the J.M.F.C., Kolhapur does not warrant any interference. In spite of that, the Appeal has been allowed by the impugned order, which deserves to be quashed and set aside.

13. Mr. Mohite, learned Counsel appearing for Respondent No. 1 opposes the prayer of the Writ Petition supporting the order impugned. It is contended that, though it is alleged that Petitioner No. 1 had agreed to be a “Gharjamai”, Respondent No. 1 went to the house of the Petitioners for cohabitation. While residing with the Petitioners, Petitioner Nos. 2 and 3 have given her insulting treatment due to non-compliance of proper formalities in the marriage. It is specifically pleaded that Petitioner No. 1 demanded Rs.50,000/- from Respondent No. 1 for starting a hotel business

on 10th October 2008. The parent of Respondent No. 1 have acceded to the demand and made payment of Rs.25,000/- to Petitioner No. 1 in presence of Petitioner Nos. 2 and 3. But later on again Petitioner No. 1 has demanded remaining amount of Rs.25,000/- on 1st November 2008. It is also contended that Respondent No. 1 was assaulted and driven out of the house. After few days when she tried to contact Petitioner No. 1, she came to know that he was residing at Pune; she followed him at Pune and resided there alongwith Petitioner No.1. Even there he has not treated her properly and driven her out of the house of his Aunt. Though she has tried her best to cohabit with the Petitioners, she has been prevented to cohabit with them and has been driven out of their house. Therefore, she is seeking protection order which is refused by the J.M.F.C., Kolhapur.

14. Learned Counsel for Respondent No. 1 submitted that the Additional Sessions Judge, Kolhapur has rightly taken into consideration that, she has been prevented from cohabiting with the Petitioners. It is also contended that, though the Petitioners have taken a stand that Petitioner No. 1 has relinquished his right in the ancestral house belonging to the parties, no such document has been placed on record. Therefore, considering that she has

been given ill-treatment by the Petitioners and was driven out of the house, she deserves all the reliefs granted by the Additional Sessions Judge, Kolhapur in the order dated 30th May 2019, does not deserve any interference.

15. I have heard the respective parties and gone through the impugned order and the annexures filed to the Writ Petition. In order to grant relief under Sections 18, 19 and 20 of the D.V. Act, 2005, it is necessary to prove that there has been Domestic violence on the aggrieved person by the respondent. After considering the submissions and observations of the impugned order it is apparent that, it is rightly observed by the Sessions Court, Kolhapur, that Petitioner No. 1 by leaving Respondent No. 1 back at Kolhapur, went away to reside at his paternal Aunt's house at Pune. Since Respondent No. 1 has followed him there, he again left her; and has left for Gujrat. It is thus observed by the Sessions Court that Petitioner No. 1 has deserted Respondent No. 1 depriving her from her legal rights to live her matrimonial life. Thus, the Petitioners has subjected Respondent No. 1 to Domestic violence, hence she is entitled for monetary reliefs as well as residence order under Section 19 of the D.V. Act, 2005. Though there are allegations against Respondent No. 1 about menopause

being suppressed by her at the time of marriage, it could not be proved since there was no medical evidence brought on record by the either of the parties. Hence, it is rightly held that so far as the contention regarding menopause of Respondent No. 1 is concerned, it could not be proved. It also needs to be appreciated that, even before the trial Court, no such application for referring Respondent No. 1 for medical examination has been taken by the Petitioners. Petitioner No. 1 has stated in his cross-examination that he does not remember, whether he had taken Respondent No. 1 alongwith him, and whether any certificate was issued by the doctor. Even the relinquishment of the house could not be proved by the Petitioners, since it was not proved before the trial Court.

16. As far as the contentions that Respondent No. 1 was employed and was earning Rs.10,000/- per month is concerned, it was mere allegation and no evidence was produced to substantiate the allegations. Hence, merely pleadings were not sufficient to hold that Respondent No. 1 is having sufficient income for her sustenance. Thus, taking into consideration all these aspects, the Additional Sessions Judge, Kolhapur has rightly held that, though Petitioner No. 1 has taken a stand that he is not earning, however, considering that he is an able bodied person and capable of doing

work, even if he works on daily wages, he would be earning Rs.300/- per day at least as an unskilled labour with an average monthly income of Rs.8,000/- to Rs.9,000/-, and from such an income he can certainly be directed to provide Rs.3,000/- per month for maintenance of Respondent No. 1, and further be directed to provide shared household in his ancestral house i.e. City Survey No. 1902 'C' Ward, Somwar Peth, Laxmi Road, Kolhapur or in the alternative Rs.1,500/- per month for securing alternative residential accommodation. The amount of Rs.3,000/- granted as maintenance to Respondent No. 1 is not at all exorbitant and it is less than sufficient for sustenance of a single person these days.

17. Though Petitioner No. 1 has taken a stand that he is not employed and he is not having any source of income, such stand cannot absolve him from his responsibility of maintaining his wife. In the case of ***Chaturbhuj V/s. Sita Bai***¹, the Hon'ble Supreme Court has held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife by providing her food, clothing and shelter by a speedy remedy. The same

¹ (2008) 2 SCC 316

stand has been further reiterated by the Hon'ble Supreme Court in ***Rajnesh V/s Neha & Anr.***² to hold that the plea of the husband that he does not possess any source of income *ipso facto* does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications. In the present case, the Petitioner No. 1 is certainly an able bodied person, hence, the order of the Additional Sessions Judge, Kolhapur, directing the Petitioner No. 1 to maintain Respondent No. 1 cannot be faulted with.

18. Considering that the Domestic violence has been proved and the Petitioners have failed to prove that Respondent No. 1 is capable of maintaining herself by earning her livelihood, the Additional Sessions Judge, Kolhapur has not committed any error in giving directions for grant of Rs.3,000/- per month in favour of Respondent No. 1 to be paid by Petitioner No. 1 alongwith the shared household or Rs. 1,500/- per month.

19. In view of the well reasoned order passed by the Additional Session Judge, Kolhapur, I do not find any infirmity or illegality in the order. Hence, there is no perversity in the findings recorded by the Additional Sessions Judge. I do not find it necessary to

² (2021) 2 SCC 324

cause interference in the order passed by him. Hence the Writ Petition does not deserve any interference and is hereby dismissed. Rule is discharged.

[MANJUSHA DESHPANDE, J.]

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