

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.502 OF 2025

Vicky Manoj Shah	...Petitioner
<i>Versus</i>	
Kanal Vicky Shah & Anr.	...Respondents

Ms. Sana Raees Khan a/w. Ms. Neha Balani i/b. SRK Legal, for the Petitioner.
Ms. Pooja Jalan a/w. Ms. Maya Donwalkar, for the Respondent No.1.
Ms. Shilpa G. Talhar, APP, for the Respondent No.2-State.

CORAM: MADHAV J. JAMDAR, J.
DATED : 25th MARCH 2025

JUDGMENT:

1. Heard Ms. Sana Khan, learned Counsel appearing for the Petitioner-Husband, Ms. Pooja Jalan, learned Counsel appearing for the Respondent No.1-Wife and Ms. Shilpa Talhar, learned APP appearing for the Respondent No.2-State.

2. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the order dated 24th October 2024 passed by the learned Principal Judge, Family Court, Mumbai below Exhibit-7 in Petition No. Criminal M.A.-23 of 2024.

By the impugned order, the present Petitioner-Husband and his family members are restrained from causing any act amounting to domestic violence towards the Respondent-Wife and minor daughter and the present Petitioner-Husband has been directed to shift to alternate accommodation till disposal of the main application. The said order is passed under the provisions of Section 18 and Section 19(1)(b) of the Protection of Women from Domestic Violence Act, 2005 (“**the D.V. Act**”).

3. It is the main contention of Ms. Sana Khan, learned Counsel appearing for the Petitioner-Husband that the marriage between the parties was solemnized on 25th January 2003. The flat in question has been purchased by registered Sale Deed dated 29th April 2003 and since then the Petitioner-Husband is staying along with the Respondent-Wife in the said flat. It is her further contention that in fact, there is no domestic violence and the Petitioner-Husband is subjected to abuse at the instance of the Respondent-Wife. To substantiate the said contention, she submitted that she has evidence in the nature of videos and transcripts. She therefore, submitted that it is share household

even of the Petitioner-Husband and therefore, the impugned order be quashed and set aside.

4. On the other hand, it is the submission of Ms. Pooja Jalan, learned Counsel appearing for the Respondent-Wife that definition of “shared household” as contemplated under Section 2(s) means a household where the person aggrieved lives. She also pointed out the definition of “aggrieved person” as defined under Section 2(a) of the D.V. Act and submitted that the Petitioner cannot be the aggrieved person and therefore, he cannot be covered by the definition of “shared household” as contemplated under Section 2(s) of the D.V. Act. She further submitted that in fact, there is no material on record to show that the Respondent-Wife has been subjected to domestic violence and therefore, the impugned order has been passed correctly. She submitted that the said flat has been purchased by the Respondent No.1 and her mother and therefore, the Petitioner has no right, title and interest with respect to the said flat.

5. Perusal of the record shows that the learned Principal Judge, Family Court, Mumbai has considered the material on record

regarding physical and verbal abuse caused by the Petitioner-Husband. Learned Judge, Family Court recorded *prima facie* finding that the Respondent-Wife has been subjected to domestic violence.

6. As far as the contention that it is shared household of the Petitioner and therefore, the Petitioner cannot be directed to shift to alternate accommodation, it is necessary to note the relevant provisions of the D.V. Act.

- i. Section 2(a) of the D.V. Act defines “aggrieved person” as follows:

“2. Definitions.—

(a) “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;”

(Emphasis added)

Thus, it is clear that the “aggrieved person” means any woman who is, or has been, in a domestic relationship with the Respondent.

- ii. Domestic relationship is defined under Section 2(f) as follows:

“2. Definitions.—

(f) “domestic relationship” means a relationship between two person; who live or have, at any point of time, lived together in a shared household, in the nature of marriage, adoption or are family members living together as a joint family;”

(Emphasis added)

- iii. The “shared household” is defined under Section 2(s) as follows:

“2. Definitions.—

(s) “shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or alongwith the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.”

(Emphasis added)

Thus a combined reading of all these definitions clearly show that “aggrieved person” means any woman. Thus, by no

stretch of imagination the Petitioner who is husband can fall under the definition of “aggrieved person” under the provisions of the D.V. Act.

7. Thus, it is clear that the “aggrieved person” as contemplated under the D.V. Act is a woman who is in domestic relationship with the Respondent and subjected to domestic violence by the Respondent. The definition of “shared household” is required to be understood in the context of the definition of the “aggrieved person”.

8. It is also relevant to note that a person who can apply to the Magistrate seeking one or more reliefs under the D.V. Act is “aggrieved person” as specified in Section 12 of the D.V. Act, the relevant part of which reads as under:

“12. Application to Magistrate.—(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present any application to the Magistrate seeking one or more reliefs under this Act....”

(Emphasis added)

Thus, it is clear that an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person can

apply to the Magistrate under the provisions of the D.V. Act. Thus, it is very clear that only woman can be the aggrieved person as more particularly contemplated under Section 2(a) of the D.V. Act and such woman or on her behalf only application can be filed before the Magistrate under Section 12 of the D.V. Act.

9. Ms. Sana Khan, learned Counsel has relied on the decision of a learned Single Judge in the case of *Ishpal Singh Kahai vs. Mrs. Ramanjeet Kahai*¹ and more particularly, on paragraph No.13 of the same. It is her contention that right has been given to both the spouses to enter into and occupy the matrimonial home and in certain cases to have the other spouses right to live there terminated despite the fact that she/he did own, fully or partly, the matrimonial home. It is her submission that therefore, right is available irrespective of the title of the house. She submitted that admittedly, the Petitioner is staying with the Respondent in the said matrimonial house since last 23 years and therefore, the impugned order is perverse.

1 2011 (3) Mh.L.J. 849

10. In the said case of *Ishpal Singh* (supra), the Petitioner/husband has challenged the order of the learned Judge, Family Court, Mumbai, directing him to remove himself from the residential flat in which he resides and from creating nuisance by attempting to enter in the suit flat until the hearing and final disposal of the Petition. While dismissing the said Writ Petition, the said observations are made by the learned Single Judge in the context of the submission made on behalf of the husband that the wife is not the full and complete owner of the flat in which he also resides and hence could not be granted the relief of injunction against him. The entire case of the husband is based upon ownership rights. In view of the above background of the factual position in *Ishpal Singh* (supra), it is very important to note the observations in paragraph No.29 of the said decision, which reads as under:

*“29. It can, therefore, be seen that **there is no place for proprietary rights under the D.V. Act. The Act is an extension of the deeper and profounder principle of Women's Rights as a part of Human Rights. The matrimonial home or the shared household of a person does not require it to be owned or co-owned by the person who has been violated. It could be any household “whether owned or tenanted, either jointly or by either of them” as specifically set out in***

section 2(s) above. It is the household in which the victim and the violator may be having rights, singly or jointly. Consequently, they may or may not have title to the property and hence the victim can apply for a residence order to the Court in respect of a shared household, which includes their matrimonial home, whether or not she has any right, title or beneficial interest therein. The very consideration of ownership rights would put materialism before matrimony.”

(Emphasis added)

Thus, it is clear that what is held in ***Ishpal Singh*** (supra) is that right is given to the victim of domestic violence in domestic relationship protecting her right of residence irrespective the law relating to ownership of immovable property. The said right is given to the victim of domestic violence in domestic relationship.

11. The “domestic violence” is defined under Section 3 of the D.V. Act is as follows:

“3. Definition of domestic violence.—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) *harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or*

(c) *has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or*

(d) *otherwise injures or causes harm, whether physical or mental, to the aggrieved person.*

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

(i) *“physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;*

(ii) *“sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;*

(iii) *“verbal and emotional abuse” includes—*

(a) *insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and*

(b) *repeated threats to cause physical pain to any person in whom the aggrieved person is interested;*

(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, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—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.”

(Emphasis added)

12. Thus, it is clear that the situation contemplated under the D.V. Act is that aggrieved person has been subjected to domestic

violence. As already noted herein above, “aggrieved person” means any woman who is in domestic relationship with the Respondent and who is subjected to any act of domestic violence. Thus, by no stretch of imagination, the protection granted under the D.V. Act is applicable to the Petitioner-Husband.

13. As far as the jurisdictional fact under the provisions of the D.V. Act that the aggrieved person is subjected to domestic violence, the learned Principal Judge, Family Court, Mumbai has recorded *prima facie* satisfaction concerning the same. Nothing is pointed out to hold that the said finding is perverse finding.

14. The factual position on record clearly shows that the flat in question has been purchased by registered Sale Deed dated 29th April 2003 by the Respondent-Wife and her mother. Thus, the Respondent-Wife and her mother are the owners of the flat in question.

15. Ms. Pooja Jalan, learned Counsel appearing for the Respondent-Wife relies on the affidavit of assets and liabilities of Petitioner-Husband filed before the learned Trial Court. In the said

affidavit of assets and liabilities, it is specifically mentioned that the Petitioner is Diamond Broker and his approximate monthly income is Rs.7,00,000/-. It is the submission of Ms. Sana Khan, learned Counsel appearing for the Petitioner-Husband that the said Rs.7,00,000/- is not monthly income but the same is annual income of the Petitioner-Husband. However, it is an admitted position that the Petitioner-Husband is in the business of Diamond Broker. In any case, there is no perversity or illegality in the impugned order.

16. Accordingly, the Writ Petition is dismissed, however, with no order as to costs.

17. At this stage, Ms. Sana Khan, learned Counsel appearing for the Petitioner-Husband seeks stay of the impugned order. However, as the subject flat is of the ownership of the Respondent-Wife and as the learned Principal Judge, Family Court, Mumbai has recorded a finding that the Respondent-Wife has been subjected to domestic violence, no case is made out for granting any stay. Therefore, the said request is rejected.

[MADHAV J. JAMDAR, J.]

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