
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (APL) NO. 1479 OF 2024

Harshad Suresh Sonawane
Age- 32 years, Occ- Doctor
Residing at Room No. 107, 1st
Floor, Old RMO Quarters,
LTMCC & LTMGH Sion Hospital
Sion, Mumbai – 400 022,
Temporarily residing at- 204,
Shree Kripa, Sector – 8, Navi
Mumbai – 400 708.

Applicant

Versus

1. The State of Maharashtra
Through Public Prosecutor

2. Puja Harshad Sonawane
Alias Miss Puja Jagdish Saner
Age- 31 years, Occ- Unknown/
Undisclosed, Residing at Black
Smith Tower, B- Wing, 1004,
Union Bank, Sector – 6, Airoli,
Navi Mumbai – 400 708, Old
Agra Road, Shahapur Dist –
Thane.

Respondents

Mr. Prashant G. Pandey a/w Mr. Tushar Halwai for the
Applicant.

Ms Dhanalakshmi Krishnaiyar, APP for the Respondent
No.1-State.

Ms Prajakta N. Deshmukh, Advocate for Respondent No. 2.

CORAM : MANJUSHA DESHPANDE, J.
RESERVED ON : 04th JULY 2025
PRONOUNCED ON : 17th JULY 2025

J U D G M E N T

1. This Criminal Application has been filed by the Applicant assailing the conditional order dated 30th September 2024 passed on Exhibit – 4, i.e. Stay Application filed in PWDVA Appeal No. 15 of 2024, by directing the Applicant to deposit Rs.5,00,000/- as a precondition for stay. Respondent No. 2 has filed Domestic Violence Complaint bearing No. DV/57/2020 before the 10th J.M.F.C., CBD Belapur, Navi Mumbai under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short “the D.V. Act, 2005”). The J.M.F.C. at Belapur has passed the order dated 20th April 2024 on an Interim Application filed by Respondent No. 2 directing the present Applicant to pay monthly maintenance of Rs.20,000/- alongwith monthly rent of Rs.10,000/- towards the residence order to Respondent No. 2 till the decision of the main application.

2. It is the case of the Applicant that after having seen the profile of the Applicant on Matrimonial Site and also from

Facebook profile Respondent No. 2 has met him, and after that they have decided to marry. Accordingly, their marriage was performed on 30th September 2017 at Trambakeshwar, Nashik in presence of the presence of parents of Respondent No. 2. After marriage, Respondent No. 2 has started making unreasonable demands with the Applicant. She has treated him with immense mental cruelty and has tormented him. Initially, after marriage they had shifted to Dhule, however, on the insistence of Respondent No. 2, he was required to shift back to Airoli.

3. Time and again, Respondent No. 2 has made demands of huge amounts of monies from him. According to him, Respondent No. 2 has demanded Rs.2 crores and her parents have demanded Rs.10 lakhs from the Applicant. The Applicant has transferred an amount of Rs.5 lakhs from his bank account to Respondent No. 2. For the entire year 2018-19, he was pressurized to give all his income to Respondent No.2 and her parents.

4. On 25th July 2018, Respondent No.2 has suddenly asked the Applicant to get their marriage registered, which he immediately approved off. However, when he received the marriage certificate he was shocked to see the date of marriage in the certificate which

was recorded as 25th July 2018, instead of 30th September 2017. When he questioned Respondent No. 2 about it, she was evasive. According to him, once she had also come late night after consuming alcohol in the May 2018. He has narrated various incidents of his torture. According to him, because of constant mental harassment and fear for registering false case by Respondent No. 2, he was constrained to leave the house. Respondent No. 2 has registered an FIR vide C.R. No. 36 of 2020, alleging the offence punishable under Section 498A of the IPC, 1860, against the present Applicant at Rabale Police Station, Navi Mumbai on 22nd January 2020. The Applicant filed Anticipatory Bail Application which came to be allowed by the Sessions Judge, Thane. Thereafter, Respondent No.2 filed Domestic Violence Complaint bearing No. DV/57/2020 against the Applicant on 3rd March 2020. The Interim Application (Exhibit-5) came to be partly allowed by the J.M.F.C, 10th Court at Belapur vide order dated 20th April 2024. Being aggrieved with the order dated 20th April 2024, the Applicant has filed Appeal before the Additional Sessions Court at Belapur, Navi Mumbai, being PWDVA Appeal No. 15 of 2024.

5. During the pendency of the Appeal, Respondent No. 2 had filed an application for issuing distress warrant before the J.M.F.C., Belapur, which was allowed vide order dated 17th August 2024. Considering the distress warrant was issued against the Applicant, he requested the Sessions Court, Belapur to stay the distress warrant and keep in it abeyance until next date of hearing of the Appeal, since the Advocate for Respondent No. 2 was seeking adjournment for hearing the Appeal on merits. The application seeking stay to the order (Exhibit-4) was prayed for by the Applicant till the conclusion of the Appeal No. 15 of 2024. The Sessions Judge, without going into the merits of the pending Appeal, passed a conditional order on 30th September 2024. The stay to the distress warrant was granted subject to the payment of Rs. 5 lakhs. The Applicant has filed an application raising objection for the said order passed by the Additional Sessions Judge, granting conditional stay. In the meanwhile, the Respondent filed an application for re-issuance of warrant, which came to be allowed in absence of the Applicant, therefore, he has filed the present Criminal Application.

6. Learned Counsel for the Applicant contends that Respondent No. 2 had not disclosed and suppressed the crucial

fact of her pre-existing marriage with one Mr. Kandarp Bhuva. Therefore, there was no valid marriage between the Applicant and Respondent No. 2, nor was there any relationship in the nature of marriage existing between them. It is submitted that the divorce proceedings were filed by Respondent No. 2 on 10th October 2017 . This itself is sufficient to indicate that there is no valid marriage existing between the Applicant and Respondent No. 2 when they entered into marriage. The Judgment/Divorce Decree between Respondent No. 2 and Mr Kandarp Bhuva came to be passed on 16th April 2018 in H.M.P. No. 702 of 2017. According to him, the marriage which is solemnized between the Applicant and Respondent No. 2 is a void marriage, since she was not eligible to contract marriage as per the provisions of Hindu Marriage Act. Though it was categorical stand of the Applicant, in the application before the J.M.F.C., Belapur, that he was not aware about her existing marriage and he has been cheated for entering into a void marriage, the order below Exhibit – 5 has been passed by the J.M.F.C., without recording any finding about the existence of domestic relationship. Considering that due to the existing valid marriage of Respondent No. 2, at the time of marriage between the Applicant and Respondent No. 2, neither there was a

valid marriage nor was there relationship in the nature of marriage. When either party has a existing valid marriage, a relationship during the existence of such marriage is not recognized as a relationship in the nature of marriage, as has been held by the Hon'ble Court in the Judgment of ***D. Velusamy V/s D. Patchaiammal¹***. In this view of the matter, according to the learned Counsel for the Applicant, the J.M.F.C., Belapur could not have passed order granting monetary relief to Respondent No. 2 on her application below Exhibit – 5.

7. Learned Counsel for the Applicant further submits that even on his application below Exhibit – 4, though the Court was convinced on merits, merely because there were outstanding arrears of Rs.10 lakhs as per the order passed by the J.M.F.C., the Additional Sessions Judge, Belapur has granted conditional stay to the order issuing distress warrant. The Additional Sessions Judge has directed him to deposit 50% of the arrears to show his bonafides. It is contended that when the domestic violence complaint itself is not maintainable in view of the absence of domestic relationship between the parties, the Additional Sessions Judge is not justified in passing the conditional order for granting

1. (2010) 10 SCC 469

stay to the distress warrant, when his substantive Appeal challenging the same was already pending before the Additional Sessions Judge, Belapur.

8. Learned Counsel for the Applicant relies on the Judgment of ***D. Velusamy V/s D. Patchaiammal*** (*supra*), wherein the Hon'ble Supreme Court has held that, in order to fulfill the condition of domestic relationship in the nature of marriage, the four criterias have been laid down by the Hon'ble Supreme Court, amongst which condition- (c), reads thus:

“(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried”

According to the Hon'ble Supreme Court, unless the above mentioned condition is fulfilled, while living together in a 'shared household' as defined under Section 2(s) of the Act, the relationship even in nature of marriage would not be attracted, in cases which do not qualify the requirement as laid down by the Hon'ble Supreme Court. It is the contention that, since the Respondent No. 2 had a valid marriage existing the day on which they have solemnized marriage, it was not a valid marriage and, therefore, there is no existence of domestic relationship. He

therefore prays that the order passed by the 10th J.M.F.C., Belapur should be quashed and set aside.

9. The Respondent No. 2 has filed reply affidavit and has strongly opposed the prayer made by the Applicant. Learned Counsel for Respondent No. 2 submits that only the ground on which the Applicant is challenging the order passed by the J.M.F.C., Belapur is that the marriage between the Applicant and Respondent No. 2 is *void ab initio*. It is submitted that, according to the Applicant, when he saw the marriage certificate issued contained the date of marriage as 25th July 2018 instead of 30th September 2017, he was shocked, however he did not take any steps to correct it. Not only that, he has made use of the same certificate for obtaining a housing loan in the year 2019, making Respondent No. 2 as a co-borrower for the loan. Even after observing the discrepancy in the marriage certificate he has continued to cohabit with Respondent No. 2 till 1st August 2019. This itself gives rise to the obvious conclusion that the claim made by the Applicant is false and bogus and only in order to avoid liability to pay maintenance to Respondent no. 2.

10. Learned Counsel for Respondent No. 2 submitted that, Respondent No. 2 is legally wedded wife of the Applicant. Though she was married prior to her marriage with the Applicant, a decree of divorce was obtained on 16th April 2018, by which, her marriage from her first husband has been dissolved. It is contended that, Respondent No. 2 had disclosed about her first marriage, and also that she was not divorced, though she intended to obtain divorce. In spite of that the Applicant has persuaded her to marry without obtaining the decree for divorce. It is further submitted that, after receiving the decree of divorce from her first marriage, they have again performed the marriage rituals on 25th July 2018, thereby legalising their marriage.

11. Learned Counsel for Respondent No.2 therefore contends that the only ground which is invoked by the Applicant for quashing the order passed by the J.M.F.C., Belapur is not available to him, as their marriage has been legalized by performing a ceremony, after obtaining the divorce decree from her first marriage and, accordingly, the marriage certificate has also been issued, which the Applicant is now disputing.

12. The Applicant has not taken any steps for cancellation of such certificate or for declaration of their marriage to be void. Respondent No. 2 has narrated various incidents of physical harassment and ill-treatment given to her by the Applicant. It is submitted that, once or twice she has also approached the police station to file a complaint against the Applicant. On one such occasion an NC was recorded against the Applicant on 1st August 2019, being N.C. No. 2354 of 2019 registered at Rabale Police Station, Navi Mumbai. She had filed complaint with Women's cell of Navi Mumbai Police Commissionerate due to the harassment and physical assault by the Applicant on 7th June 2019. Even after leaving the matrimonial home on 1st August 2019, the Applicant has continued to harass her, therefore, she was constrained to file D.V. complaint.

13. Learned Counsel for Respondent No.2 contends that the Applicant being legally married to her and it is his legal as well as moral responsibility to maintain her. He has refused to provide any maintenance to her. He has also not paid the EMI of the home loan with an intention to harass her. She is not highly educated, having completed her education only up to the 12th standard. Therefore, she is not in a position to work and look

after her financial needs, even for the day to day basic needs and requirements she needs financial support. It is therefore submitted that the Application filed by the Applicant deserves to be dismissed.

14. Learned Counsel for Respondent No. 2 has placed reliance on the judgment of the Hon'ble Supreme Court in ***Smt. N. Usha Rani & Anr. V/s. Moodudula Srinivas***², wherein the Hon'ble Supreme Court has held that, a women is entitled to claim maintenance under Section 125 of the Cr.P.C. from her second husband even when her first marriage is not legally dissolved. A formal decree of dissolution is not mandatory. If the woman and her first husband mutually agreed to separate, the absence of a decree of divorce, does not prevent her from seeking maintenance from her second husband. The right to maintenance under Section 125 of the Cr.P.C. is not a benefit received by a wife but rather a legal and moral duty owed by the husband.

15. I have considered the submission of the respective parties and I have gone through the order passed by the Additional Sessions Judge, Belapur dated 30th September 2024 as well as the order passed by the 10th J.M.F.C., CBD, Belapur, Navi Mumbai

2. 2025 LiveLaw (SC) 156

dated 20th April 2024. The first thing that needs to be considered is that, even though the substantive appeal filed by the present Applicant against the order passed by the J.M.F.C., CBD, Belapur is filed before the Sessions Court, Belapur, he has approached this Court challenging the very order. When he requested the Additional Sessions Judge, Belapur to urgently take the matter on board in view of the issuance of distress warrant against him, without causing any prejudice to the rights and contentions of the parties the Additional Sessions Judge, Belapur has passed a conditional order directing the Applicant to deposit an amount of Rs.5,00,000/- to show his bonafides. I do not find any perversity or illegality in the order which is passed without going into the merits of the matter. It needs to be appreciated that when the Applicant approached this Court, even this Court while issuing notice has recorded the statement of the Advocate for the Applicant that he will deposit an amount of Rs.3,00,000/-, and only upon making such statement the interim relief of not taking coercive action was granted in favour of the Applicant. The amount directed to be deposited is in order to show his bonafides.

16. Considering that the substantive Appeal against the order which is sought to be quashed by the Applicant in the present

Application is a subject matter of the appeal before the Additional Sessions Judge, Belapur, I do not find that there is any scope for interference in the present Criminal Application. The only ground on which the Criminal Application is filed by the Applicant is that his marriage is *void ab initio* due to the existence of the first marriage of Respondent No. 2, and since the marriage itself is void, there is no question of paying any maintenance. For entertaining a complaint under Section 12 of the D.V. Act, 2005 upon going through Section 12 it is evident that only a aggrieved person can file a complaint under Section 12 of the D.V. Act, 2005. The aggrieved person is defined under Section 2(a) of the D.V. Act, 2005, which reads thus:

“2(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.”

17. A domestic relationship is also defined under Section 2(f) of the D.V. Act. In order to attract the domestic relationship, there has to be a shared household between the two persons, when they are either married or in a relationship in the nature of marriage. According to the Applicant, since the marriage is not valid, there is

no question of Domestic relationship, and even for attracting “relationship in nature of marriage”, due to the existence of first marriage of Respondent No. 2 with one Mr. Kandarp Bhuva, the second marriage does not qualify, even for attracting “relationship in nature of marriage” as per the judgment of **D. Velusamy V/s D. Patchaiammal** (*supra*). This judgment is applicable to a relationship in nature of marriage, however the Applicant as well as Respondent No. 2 have undisputedly performed marriage which is not yet declared null and void.

18. In a similar circumstances, the Hon’ble Supreme Court in the case of **Deoki Panjhiyara V/s. Shashi Bhushan Narayan Azad**³ has held that, any determination of validity of marriage between parties can be made only by a Competent Court in an appropriate proceeding by and between the parties and with all other requirements of law. Mere production of a marriage certificate in support of claim of first marriage is not sufficient for any of the courts including the High Court to render a complete and effective decision with regard to marital status of the parties and that too in a collateral proceeding for maintenance. Consequently, the Hon’ble Supreme Court held that, until the

³ (2013) 2 SCC 137

invalidation of marriage between the appellant and the respondent is declared by a competent court, it would only be correct to proceed on the basis that, the appellant continues to be the wife of the respondent so as to entitle her to claim all benefits and protection available under the D.V. Act, 2005.

19. Incidentally, the Hon'ble Supreme Court was also dealing with a similar situation like that of the present case, wherein the husband had claimed that the marriage with the complainant was void, therefore, he was not bound to pay maintenance under the D.V. Act, 2005, since there was no domestic relationship or a relationship in the nature of marriage between the parties. The Hon'ble Supreme Court has held that, unless the competent court declares such marriage to be invalid, it will have to be presumed that such marriage is valid and the wife will be entitled to all the benefits and protection available under the D.V. Act, 2005, until invalidation of marriage between the parties.

20. In view of the judgment of the Hon'ble Supreme Court in the aforementioned case, I do not find that any case for interference is made out by the Applicant. Even otherwise, considering that the substantive appeal is already pending before the Court of

Additional Sessions Judge, Belapur, no interference is called for. Accordingly, the Criminal Application stands dismissed.

21. Since this Court while issuing notice had directed the Applicant to deposit the amount of Rs.3,00,000/- in this Court the amount deposited in this Court, shall be transferred to the Court of Additional Sessions Judge, Belapur, Navi Mumbai in PWDVA Appeal No. 15 of 2024.

[MANJUSHA DESHPANDE, J.]

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