



Judgment

revn51.25

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL REVISION APPLICATION NO.51 OF 2025

Dr.Bhashkarrao Sadashivrao Hirulkar,
aged about- 63 years, occupation- practitioner,
r/o Yeoda, taluka Daryapur, district:
Amravati. **Applicant.**

:: V E R S U S ::

Smt.Alka Bhaskarrao Hirulkar,
aged about- 47 years, occupation: housewife,
r/o Yeoda, at present- Chandikapur,
taluka Daryapur. **Non-applicant.**

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Shri R.Bhishikar, Counsel for the Applicant.
Ms Parita Lakhani, Counsel for the Non-applicant.
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CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 25/03/2026
PRONOUNCED ON : 02/04/2026

JUDGMENT

1. Heard learned counsel appearing for the respective parties. **Admit.** Heard finally by consent.
2. By this revision, the applicant challenges judgment and order dated 22.5.2014 passed by learned JMFC, Court No.2,

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Daryapur in Misc.Criminal Case No.162/2013 restraining the applicant to commit domestic violence on the non-applicant and her daughter, until further orders.

He further challenges operative part (v) of the said judgment and order by which the applicant, in view of Section 18(e) of the Protection of Women from Domestic Violence Act, 2005 (the D.V.Act), is restrained to alienate fields gat No.1247 situated at Yeoda admeasuring 3.56 and gat No.1230 admeasuring 1.62R and house at Yeoda No.784/1 1342 square feet to any third person, till he gets his share.

3. Brief facts for disposal of the revision are as under:

The applicant and the non-applicant are husband and wife. Their marriage is solemnized on 17.3.1998. After the marriage, the non-applicant resumed cohabitation at Yeoda at the house of the applicant. The applicant was earlier married and his first wife died January 1998. The applicant was

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having three children from the said wedlock. The non-applicant has resided in joint family and she is also having a daughter namely Ankita. The birth of her daughter Smita begotten from the first marriage of the applicant which was performed in the year 2003. It is alleged that the applicant and his two sons Atul and Ashish started ill-treating the non-applicant. On 5.2.2008, the applicant brought the non-applicant at Shegaon on pretext that they will reside separately from sons Atul and Ashish. On 6.2.2008, the applicant left the non-applicant at Shegaon and gave Rs.100/- and asked her to go to her parental house. On 11.2.2008, the applicant issued her notice of judicial separation and, thereafter, she came to know that the applicant has betrayed her. Thereafter, she filed an application bearing Misc.Criminal Application No.114/2009 for maintenance. The trial court has granted her maintenance @ Rs.2000/- per month and Rs.1000/- to her daughter. By way of the said application, she came to know that the applicant distributed the property

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owned by him in the year 2004 between his sons and daughter. The applicant was possessing 13 acres of land at Yeoda. He is doctor by profession. He possesses other assets also. Therefore, she filed an application under Sections 18, 19, 20, and 22 of the D.V.Act.

4. The applicant has resisted the claim of the non-applicant by filing his written statement. He admitted relationship. However, rest of contentions are denied by him. It is alleged by him that the non-applicant was insisting him to stay separately from his sons and she has also attempted to commit suicide on 5.2.2008. The sons of the applicant have lodged FIR about the incident of attempt by the non-applicant of suicide. He admitted that he distributed all shares between his sons and also left his profession as doctor and now he is shelterless and dependent upon income of his sons and, therefore, prayed for rejection of the application.

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5. In order to establish the case, the non-applicant has filed her affidavit of examination-in-chief vide Exh.12 and also relied upon various documents. The applicant also entered into the witness box vide Exh.22 and also relied upon documents Exhs.24 to 28. He examined his sons Ashish, Vishnupant, and Shrikrishna Kawale.

6. After appreciating the evidence of these witnesses, learned JMFC came to conclusion that the non-applicant has claimed residence order by filing an application. The object of the D.V.Act is to grant immediate relief to the aggrieved person. The Hindu Law does not permit by instituting a suit for partition unless co-sharers claim partition. Her daughter is minor and, therefore, she could not institute a suit for partition. The transactions entered into by the applicant are not genuine and with an ulterior motive, only to deprive rights of the non-applicant and her daughter, restrained the applicant from alienating the said agricultural lands as well as the house property.

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7. Being aggrieved and dissatisfied with the same, the present revision application is filed by the applicant on the ground that learned JMFC has no right to restrain the applicant from alienating the suit property as share of the non-applicant cannot be determined in the domestic violence proceeding and on this ground, prayed for quashing and setting aside the order impugned in the revision.

8. Learned counsel for the applicant submitted that as far as share of the non-applicant is concerned, the same is to be considered by the civil court in an appropriate proceeding. Learned JMFC in domestic violence proceeding is not empowered to restrain the applicant from alienating the suit property as unless and until share is determined by the competent court, such type of order restraining the applicant from alienating the suit proper owned by him is illegal.

9. In support of his contentions, learned counsel for the applicant has placed reliance on the decision in the case of

Maharaj Kumari Vishnupriya vs. State of UP and ors, reported in 2024 SCC OnLine ALL 1694.

10. *Per contra*, learned counsel for the non-applicant has strongly opposed the said contentions and submitted that in view of Section 18 of the D.V.Act, wife can claim protection order. She filed an application under Section 12 claiming the domestic violence at the hands of the applicant and in view of various provisions, she claimed the right. Learned JMFC has not granted any share, but he has only protected the right by way of restraining the applicant from alienating the suit property.

11. In support of her contentions, learned counsel for the non-applicant has placed reliance on the decision in the case of **Prabha Tyagi vs. Kamlesh Devi, reported in AIR 2022 SC 2331** and prayed for rejection of the revision application.

12. After hearing both sides and perusing the entire evidence on record, the non-applicant has claimed the

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domestic violence at the hands of the applicant and claimed the right of residence under Sections 18 and 19 of the D.V.Act.

13. Before entering into merits of the present revision, object of the D.V.Act needs to be taken into consideration.

14. The object of the D.V.Act is for providing more effective protection of the rights of women who are victims of violence occurring within family.

15. Section 18 of the D.V.Act provides for granting protection orders, which are essentially to prevent commission of acts of domestic violence against women. The orders which can be passed under Section 20 are with the object of compensating a woman for loss caused due to domestic violence.

16. Section 3 of the D.V.Act defines domestic violence, which is reduced as under:

“3. Definition of domestic violence- For the purposes of this Act, any act, omission or commission or

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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;

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(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, household 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 household 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

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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.”

17. Thus, Section 3 of the D.V.Act defines expression “domestic violence.” which means any act, omission or commission or conduct of the respondent shall amount to domestic violence in certain circumstances. It includes physical, sexual, verbal, emotional, and economic abuse, which are also explained in the clause.

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18. In determining whether any act, omission, commission or conduct of the respondent constitute domestic violence in overall facts and circumstances of the case shall be a guiding factor.

19. It is specifically alleged by the non-applicant that when she was residing along with the present applicant, the present applicant, on a pretext of staying separately, brought her at Shegaon, handed over her amount Rs.100/- and asked her to go to her parental house. He has also issued a Notice of judicial separation. It is specifically alleged by her that not only the present applicant but also her stepsons ill-treated her.

20. Thus, the present applicant, on false pretext, brought the non-applicant at Shegaon and, thereafter, filed a petition for judicial separation and divorce. Thus, the said act is an omission on the part of the present applicant. The conduct of bringing the non-applicant on a false pretext and, thereafter,

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providing her Rs.100/-, and asking her to go to her parental house, is sufficient to show that it is an “emotional abuse”.

21. Perusal of definition of “economic abuse” shows that it includes 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, household 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 household and maintenance.

Sub-clause (b) of definition of “economic abuse” states that 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

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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.

Sub-clause (c) of definition of “economic abuse” states that 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.

22. In the light of the above definition, bringing the non-applicant on the pretext of residing separately and depriving her from financial resources or prohibiting or restricting her from having access to the said resources like household property or agriculture property, to which she is entitled, is covered under the “economic abuse”. As the non-applicant was deprived from having access to the said assets or resources or the facilities, to which she was entitled to use,

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she filed an application under Section 18 of the D.V.Act for protection orders and under Section 19 of the D.V.Act for residence orders.

23. The D.V.Act is enacted as an Act to provide for more effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. The statements and objects of the said Act define “domestic violence” and it includes actual abuse or threat or abuse i.e. physical, sexual, verbal, emotional or economic.

24. The material on record shows that the non-applicant was deprived from having an access to the property to which she is entitled to.

25. The protection orders can be sought against committing any act of “domestic violence” defined under Section 3 of the D.V.Act to include a case of “economic abuse”

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i.e. alienation of assets in which the aggrieved person has an interest or is entitled to use by virtue of domestic relationship.

26. As per Section 18(e) of the D.V.Act, the Magistrate has power to pass a protection order prohibiting the respondent from alienating any assets or operating bank lockers or bank accounts used or held or enjoyed by both the parties jointly by the aggrieved person and the respondent or singly by the respondent including her stridhan or any other property held either jointly by the parties or separately by them without leave of the Magistrate. Therefore, the Magistrate is empowered to pass an order prohibiting the respondent from alienating any assets enjoyed singly by the respondent i.e. the present applicant. The property, which is in exclusive possession and ownership of the applicant, would come under the sweep of “any property”. In short, a property, which is in exclusive possession and enjoyment of the present applicant as a single owner, can also be prohibited from alienation. Therefore, learned Magistrate is empowered to pass an order

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prohibiting the respondent i.e. the applicant from alienating his own property other than shared household.

27. Section 18(e) specifically states as under:

“18. Protection orders. - The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from

(a).....

(b).....

(c).....

(d).....

(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(f).....”

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28. Section 18 provides that the Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person. A protection order may also include an order prohibiting the respondent from committing any act of domestic violence or aiding or abetting therein, entering the place of employment of the aggrieved person or if the person aggrieved is a child, its school or any other place frequented by the aggrieved person or attempting to communicate in any form whatsoever with the aggrieved person without the leave of the Magistrate, alienating any assets, operating bank lockers or bank accounts belonging to both the parties jointly or separately by them, causing violence to the dependents, other relatives or any person giving the aggrieved person assistance from domestic violence or committing any other act as specified in the protection order.

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29. Similarly, Section 23 of the D.VAct empowers the Magistrate to grant *interim* and *ex parte* orders under Sections 18, 19, 20, and 21, as the case may be, under Section 22 against the respondent upon arriving at a *prima facie* satisfaction of commission of a act of domestic violence or even a likelihood of commission under Section 23 restricts the relief which may be granted under Section 23 of the D.VAct to ones under Sections 18, 19, 20, and 21 or, as the case may be, under Section 22. The protection orders may be granted under Section 18.

30. Insofar as the restraining order sought is concerned, it is passed by learned Magistrate in view of Section 18(e) of the D.VAct.

31. Insofar as the “domestic violence” is concerned, in a case of “domestic violence,” it is not necessary that the acts complained of are required to be substantiated by

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documentary evidence in form of medical records or police records.

32. It is well known that as the marriage is subsisting, more often than not, there is no police complaint filed and the physical abuse may not be to such an extent so as to require hospitalization, in which his medical report would substantiate the abuse.

33. It needs to be noted that although provisions of the CrPC govern the proceedings, the remedies are civil remedies and the usual standard of proof beyond reasonable doubt applicable to criminal offense is not required to be applied in such type of cases.

34. It is well known that abuse in a matrimonial relationship usually occurs within four walls of the house and it is confined to two parties. It is very rarely that such incidents occur in presence of eyewitnesses and the evidence has to be accordingly assessed.

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35. In case of “domestic violence”, it is often found that the wife does not immediately rush to the police when there is any physical or mental or psychological or economic abuse as she wants to save her family and even if such persons suffer injuries, they would not necessarily keep medical records of the same.

36. In such circumstances, the evidence of the aggrieved person is to be examined on touchstone of probability and where, even, abuse is in the nature of mental torture or emotional distress, that would cover under the D.V.Act.

37. The D.V.Act is enacted to provide for more effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. The statements and objects of the said Act define “domestic violence” and it includes actual

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abuse or threat or abuse i.e. physical, sexual, verbal, emotional or economic.

38. As already observed, the Magistrate has considered that it was an “economical abuse” by conduct at the hands of the present applicant and, therefore, to protect the rights of the non-applicant, the present applicant was restrained from alienating assets.

39. The order impugned is challenged by the present applicant by preferring the present revision.

40. As far as scope of revision is concerned, which is not meant to be exercised as an appellate powers unless the findings are so perverse or untenable in law that the court is bound to step in and exercise the revisional jurisdiction to do substantive justice.

41. The revisional jurisdiction under Section 397 of the CrPC has to be exercised when order passed by the Magistrate

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is perverse or view taken by the court is wholly unreasonable or there is non-consideration of any relevant material etc.

42. The Hon'ble Apex Court, in the case of **Sanjaysinh Ramrao Chavan vs. Dattatraya Gulabrao Phalke**, reported in **MANU/SC/0040/2015**, has held that, "unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non- consideration of any relevant material or there is palpable misreading of records, the revisional court is not justified in setting aside the order, merely because another view is possible. The revisional court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. Revisional power of the court under Sections 397 to 401 of Cr.PC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or

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where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.”

43. Thus, the scope of revisional jurisdiction to be exercised is very limited. The revisional power can be exercised only in the above circumstances and when there is failure of justice or the court has found that there is no jurisdiction to try the case or where the material evidence has been overlooked.

44. Testing validity of the order impugned as to the above said aspects and in particular correctness or legality or propriety of the finding recorded or the order passed and as to the regularity of the proceeding, this court is of the view that the applicant has not made out a case for interference. The order of learned JMFC restraining the present applicant

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or prohibiting or alienating assets, under Section 18(e) of the D.V.Act, cannot be said to have been passed without judicial and logical mind in arriving at the conclusion of the “domestic violence” and, therefore, the present revision being devoid of merits is liable to be rejected and the same **rejected**.

Revision stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

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