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

CRIMINAL REVISION APPLICATION NO.131 OF 2022

n ... APPLICANT

// VERSUS //

n ... NON-APPLICANT

Shri R.N. Sen, Advocate for the applicant.
Shri Mohtesim Badar, Advocate for the non-applicant.

CORAM : G. A. SANAP, J.
Date of reserving Judgment on:- 17/04/2023
Date of pronouncing judgment on:-09/06/2023

JUDGMENT

1. Rule. Rule made returnable forthwith. Heard finally by consent of learned Advocates for the parties at the stage of admission.

2. In this criminal revision application, challenge is to the judgment and order dated 17.11.2021 passed by the learned Sessions Judge, Akola, whereby the learned Sessions Judge dismissed the appeal filed by the applicant and allowed the Criminal Appeal filed by the non-applicant and enhanced the amount of maintenance quantified by the Magistrate and awarded the same at the rate of Rs.16,000/- per month to the non-applicant/wife and Rs.2,500/- to the minor son from the date of the application i.e. 01.03.2014.

3. The facts are as follows:-

In this judgment, the parties would be referred by their nomenclature in Miscellaneous Criminal Application filed under Section 12 of the Protection of Women From

Domestic Violence Act, 2005 (for short "the D.V.Act"). The non-applicant is the original applicant. The applicant is the original non-applicant No.1. He would be referred to as a non-applicant. It is the case of the applicant that she got married with the non-applicant on 07.01.2001. She begotten three children in the wedlock. In the main application there were 13 non-applicants. The rest of the non-applicants are relatives of the non-applicant-husband. The applicant and non-applicant are from Akola. After marriage, the applicant cohabited with the non- applicant at Akola. After sometime the non-applicant got a job in J.G.C. Gulf International Company At Alkhubar City of Saudi Arabia. The applicant went to Saudi Arabia in 2006 and cohabited with the non-applicant. According to the applicant, during initial period there was no problem. It is stated that there was dispute between relatives of the non-applicant and the relatives of the applicant. They were residing in the same building at Akola. On the report of the relatives of the applicant, the relatives of the non-applicant were prosecuted in the Court of law. The

cause of the dispute and the sour relations between the applicant and non-applicant is the dispute between them. It is stated that the relatives of the non-applicant, namely non-applicant Nos.2 to 13 in the main application, were the real cause of turbulence in their marital relations. They insisted the non-applicant to pursue the relatives through applicant to compromise the criminal case. The non-applicant insisted the applicant to play the role of mediator and convince her relatives to compromise the matter. It was of no use. It is stated that therefore, the non-applicant Nos. 2 to 3 instigated the non-applicant to ill treat and torture the applicant so that the relatives of the applicant and the applicant is forced to compromise the criminal case. The non-applicant at the instigation of his relatives' insisted the applicant to lodge a report against her relatives. The applicant refused to do so and therefore, she was ill treated and tortured. She narrated the same to her parents. Cousin brother of the applicant, made a complaint to Maulavi in Saudi Arabia and sought his intervention in the matter of cruelty meted out to the

applicant. The matter was settled. The applicant joined the non-applicant in the year 2006 again. It is stated that there was no improvement in the behaviour and conduct of the non-applicant. The applicant was mentally and physically tortured and ill treated. In the meeting for settlement the non-applicant gave an undertaking of good behaviour with the applicant. Since the ill treatment and torture continued, in the year 2010 the applicant came back to India with the non-applicant. Again her cousin made complaint to the religious Maulavi in Saudi Arabia against cruelty to the applicant at the hands of the non-applicant. The non-applicant, due to intervention by religious Maulavi in Saudi Arabia, again gave an assurance to treat the applicant properly. It is stated that there was no improvement in the conduct of the non-applicant. Ultimately in the year 2012, the applicant and the non-applicant with the children came back to India. The applicant stayed at the house of non-applicant. It is stated that during this period, she was again pressurized to lodge report against her relatives. She refused to do it and

therefore, on 07.08.2012, she was mercilessly beaten. They tried to kill her by pouring kerosene on her person. However, she managed to escape herself from the clutches of the non-applicants and went to the house of her parents with younger son . She lodged the report at Ramdaspeth Police Station, Akola. A crime bearing No.154/2013 came to be registered against the non-applicant and his relatives. The non-applicant with two children went to Saudi Arabia. It is stated that she was subjected to domestic violence. Non-applicant did not make any provision for maintenance and other reliefs. She has no source of income. The non-applicant, according to her is getting monthly income of 20,000/- Riyals, which is equal to Rs.3,50,000/- in Indian currency. The applicant therefore, prayed for maintenance, shared household, compensation and other reliefs.

4. The non-applicant opposed this application. He has denied the material allegations made in the application. According to the non-applicant, the allegations made by the

applicant are false and frivolous. He took proper care of the applicant and his children. They were living happy married life in Saudi Arabia. It is his case that on account of dispute between the relatives of the applicant and his relatives, the applicant used to quarrel with him and his relatives. His relatives were dragged in a criminal case by the relatives of the applicant. The applicant was the main cause of their dispute. After some time he gave understanding to the applicant and requested her not to spoil their matrimonial life in the dispute between their family members. The applicant did not pay any heed to the same. It is contended that on 07.09.2012 the applicant on her own left his house with all her belongings, ornaments, cash etc. He tried his level best to bring back the applicant for cohabitation. The applicant deliberately avoided to resume cohabitation with him. It is stated that when all his efforts to convince the applicant failed, he ultimately on 30.08.2013 gave 'Talaq' to the applicant. It was properly communicated to the applicant by registered post. In short, it is his case that applicant was not subjected to any domestic

violence. He has made provision for her maintenance. On account of the grudge of her parents and her relatives against him, the present situation has been invited in their life. It is stated that the non-applicant is a temporary employee. He has denied his income as stated in the application. According to him, his monthly salary is around Rs.50,000/- to Rs.60,000/-. He therefore, denied the claim of applicant on all counts.

5. The parties adduced evidence before the learned Magistrate. Learned Magistrate on appreciation of evidence held that the applicant was subjected to domestic violence by the non-applicant. Learned Magistrate, therefore, partly allowed the application and awarded maintenance at the rate of Rs.7,500/- per month to the applicant and Rs.2,500/- per month to the son. Learned Magistrate also awarded Rs.2,000/- per month to the applicant as rent. Learned Magistrate awarded the compensation of Rs.50,000/- to the applicant.

6. Both the parties, being aggrieved by this order,

challenged the said order by filing appeals. Learned Sessions Judge dismissed the appeal filed by the non-applicant and allowed the appeal filed by the applicant and enhanced the maintenance payable to the applicant from Rs.7,500/- to Rs.16,000/- per month. The non-applicant being aggrieved by this order has come before this Court.

7. I have heard Shri R.N. Sen, learned Advocate for the applicant and Shri Mohtesim Badar, learned Advocate for the non-applicant. Perused the record and proceedings.

8. Learned Advocate for the non-applicant submitted that on all counts the order passed by the learned Magistrate as well as the order passed by the learned Sessions Judge is not in accordance with law. Learned Advocate submitted that admittedly on 07.09.2012 the applicant on her own left his house and took shelter of the house of his father. Learned Advocate pointed out that this application with the allegation of domestic violence was filed after more than one year from

the date he applicant left his house. Learned Advocate therefore, submitted that on the date of filing of application, there was no domestic relationship between the parties. Learned Advocate submitted that in the fact situation the applicant was not covered by the definition of the aggrieved person as provided under Section 2 (a) of the Domestic Violence Act. Learned Advocate submitted that on this count, the applicant was not entitled to get any relief. It is submitted that on this count, the order passed by the learned Magistrate as well as the learned Sessions Judge are not sustainable. Learned Advocate further submitted that in her cross examination the applicant has categorically admitted that she had received the intimation of Talaq given to her by the non-applicant by registered post. Learned Advocate submitted that the parties are muslim. Learned Advocate therefore, submitted that the applicant being a divorced Muslim woman is not entitled to get maintenance from the non-applicant in view of Section 4 and Section 5 of the Muslim Women (Protection of Rights On Divorce) Act, 1986. Learned Advocate submitted

that this provision would be equally applicable to the proceeding initiated under the D.V. Act by divorced Muslim woman. The third contention of the learned Advocate for the non-applicant is on the quantum of the maintenance. Learned Advocate submitted that there is no iota of evidence to show that the non-applicant is earning Rs.20,000/- Riyals per month. Learned Advocate submitted that the non-applicant is not Chemical Engineer, but a Supervisor. He is getting monthly salary of Rs.50,000/- to Rs.60,000/-. Learned Advocate therefore, submitted that the enhanced maintenance quantified by the learned Sessions Judge is not supported by the record.

9. Learned Advocate for the applicant submitted that on the basis of the evidence on record the applicant has proved that she was subjected to domestic violence. Learned Advocate submitted that the applicant has proved that she was in domestic relationship with the non-applicant and as such an aggrieved person. Learned Advocate submitted that

the definitions of "aggrieved person" and "domestic relationship" does not contemplate that on the date of filing of an application for the relief under the D.V. Act, the aggrieved person should be actually residing and living together." In order to seek support to this submission reliance has been placed on a decision in the case of ***Dhananjay Ramkrishna Gaikwad & Ors. Vs. Sunanda Dhananjay Gaikwad & Ors.*** reported in ***2016 All MR (Cri.) 2291 (SC)***. Learned Advocate submitted that the non-applicant has not proved that he gave a Talaq to the applicant. Learned Advocate in the alternative submitted that even if it is held that the non-applicant has given Talaq to the applicant, the applicant would be entitled to seek relief under Section 12 of the D.V. Act in respect to the past domestic violence. The learned Advocate further submitted that muslim woman even after divorce is entitled to get maintenance from her husband after *iddat* period, as long as she does not re-marry. In order to seek support to this submission reliance has been placed on the decision in the case of ***Shabana Bano v. Imran Khan*** reported in ***2010 CRI.***

L.J. 521 SC and the decision of coordinate Bench of this Court at Aurangabad bench in the case of ***Atmaram Narayan Sanap vs Sangita Atmaram Sanap,*** reported in ***2020 (1) ABR (CRI) 100.*** Learned Advocate submitted that the courts below have recorded concurrent findings of facts on both the counts. Learned Advocate submitted that therefore, unless and until it is pointed out that said finding suffers from patent error or perversity, the same cannot be interfered with. Learned Advocate submitted that no case has been made out to warrant interference in the concurrent findings of fact. Learned Advocate further submitted that the maintenance quantified by the learned Sessions Judge is just, proper and reasonable. Learned Advocate pointed out that the non-applicant, despite direction of the Appellate Court did not file the statement of assets and liabilities. Learned Advocate submitted that therefore, the revision deserves to be dismissed.

10. In order to appreciate the rival submissions, I have gone through the record and proceedings. I have perused the

order passed by the learned Magistrate as well as the order in appeal by the learned Sessions Judge. At the out set, it needs to be stated that the learned Magistrate as well as the learned Sessions Judge on minute scrutiny of the evidence on record, recorded a finding that the applicant was subjected to domestic violence by the non-applicant. Learned Magistrate as well as the learned Sessions Judge found that in view of the settled legal position the applicant would satisfy the requirements of definition of "aggrieved person" as well as the definition of "domestic relationship". Learned Sessions Judge on the basis of the material on record as well as by applying the law to the said material found the applicant entitled to get maintenance at the rate of Rs.16,000/- per month. It needs to be stated that in the exercise of revisional jurisdiction the order of the court below can be interfered with if the Court is satisfied that the order is perverse, arbitrary or unreasonable. It is needless to state that unless and until these factors are borne out from the record the interference in the concurrent findings of fact is not permissible in the exercise of revisional

jurisdiction. On going through the record and proceeding, I am satisfied that the decisions rendered by the two courts below cannot be said to be either perverse, arbitrary or capricious and as such does not warrant interference in the exercise of revisional jurisdiction.

11. Learned Sessions Judge has recorded a finding that evidence on record adduced by the non-applicant is not sufficient to prove the factum of divorce alleged by him. It is true that the applicant in her cross-examination has admitted that she had received communication of divorce from the non-applicant by registered post. In my view, this evidence would not detain me further on this point because legal position on this point is well settled. In the context of the limited dispute involved in this proceeding the legal position settled by the judicial pronouncement is required to be considered. In the case of ***Shababa Bano Vs. Imran Khan (supra)*** the Hon'ble Supreme Court has held that even if a Muslim women has been divorced, she would be entitled to

claim maintenance from her divorced husband, as long as she does not re-marry. It is held that provisions of Section 125 of the Cr.P.C. being a beneficial piece of legislation, the benefit thereof must accrue to the divorced Muslim woman. In this case, even if it is assumed for the sake of argument that the non-applicant has given divorce (Talaq) to the applicant, she cannot be denied maintenance in the proceeding initiated under Section 12 of the D.V. Act. Therefore, in my view, on this count the submissions advanced on behalf of the non-applicant cannot be accepted.

12. The next important issue is with regard to the entitlement of wife to seek relief under Section 12 of the D.V. Act, after divorce, in respect of past domestic violence. In order to substantiate the contention with regard to the maintainability of the proceeding under Section 12 of the D.V. Act, reliance has been placed on the decision in the case of *Atmaram Narayan Sanap Vs. Sangita Atmaram Sanap (supra)*. In this case, the coordinate Bench of this Court has dealt with

this issue in great detail. Paragraph Nos.22 and 23 would be relevant for this purpose. The same are extracted below:-

> *"22. Besides, assuming for the sake of arguments that the marriage stood dissolved by the decree of divorce, still, as has been held in the case of Juveria Abdul Majid Patni (AIR Online 2014 SC 224) (supra), she would be entitled to file a proceeding under Section 12 of the D.V. Act in respect of the past domestic violence. The following observations from paragraph no. 30 are relevant:*
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> *"30. An act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Domestic Violence Act, 2005 including monetary relief under Section 20, child custody under Section 21, compensation under Section 22 and interim or ex parte order under Section 23 of the Domestic Violence Act, 2005."*
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> *23. In view of such observations, no fault can be found in the decision of the two Courts below in relying upon these observations and holding that the proceeding initiated by the Respondent no.1 was maintainable."*

13. This decision clearly lays down that an act of domestic violence once committed, the subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the D.V. Act, including monetary relief under Section 20, of the D. V. Act. In my view, this decision supports the contention of the applicant. In view of the settled legal position, the contentions of the non-applicant cannot be accepted.

14. The next important point that needs to be addressed is as to whether the application filed after one year of separation between the parties would be maintained. In this case useful reference can be made to the decision in the case of ***Dhananjay Gaikwad Vs. Sunanda Gaikwad (supra).*** Paragraph No.8 are extracted below:-

> ***"8. However, needless to state, that this very argument itself is misconceived, because the wording of 'Aggrieved Person', as laid down in Section 2(a) clearly provided that any women, who is or has been in domestic relationship with the***

respondent. The definition of 'Domestic Relationship' also means relationship between two persons, who live or have, at any point of time, lived together in shared household. The definition of 'Shared Household' also means where the person aggrieved lives or at any stage has lived in a domestic relationship. Therefore, none of the definitions contemplate that on the date of filing such application for the reliefs under Protection of Women from Domestic Violence Act, the parties should be actually residing or living together. The very words "has lived together at any point of time" necessarily cover even the past co-habitation or past living together. Otherwise, these words would not have appeared in the definition. Giving any other interpretation would be making these words nugatory. So till the time the marital tie subsists and the party, at any point of time, had lived together, the application or proceedings under Protection of Women from Domestic Violence Act can survive and are very much maintainable so as to grant the necessary relief."

15. In order to seek support the contention that the applicant would fall in the definition of "aggrieved person", reliance is placed on the decision in the case of ***Smt. Bharati***

Naik v. Shri Ravi Ramnath and Halarnkar and another reported in *2011 Cr.LJ. 3572* . In this case, Hon'ble Apex Court has held that "aggrieved person" postulates a woman "who is", or "has been" in a domestic relationship with the respondent. It is held that such words are used in the definition to cover past relationship as well. It would be profitable to extract the relevant paragraphs:-

> *"8. In my view, the definition of the "aggrieved person""and the "Respondent" are the defining definitions in so far as the issue that arises for consideration in the present Petitions is concerned. The definition of "aggrieved person" postulates a woman who is, or "has been" in a domestic relationship with the Respondent and the Respondent means any adult male person who is, or "has been", in a domestic relationship with the aggrieved person. Since a domestic relationship is a sine qua non for invoking the provisions of the said Act, Section 2(f) also becomes material. Section 2(f) as can be seen from a reading of the said provision means a domestic relationship between two persons who live or "have", at any point of time, lived together*

in a shared household, when they are related by consangainity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. Therefore, the aforesaid three definitions take in their sweep even a past relationship as the words "has been" or "have lived' have been used in the said definitions. The said words therefore, have been used purposefully as the said Act has been enacted to protect a woman from domestic violence and, therefore, there cannot be any fetter which can come in the way by interpreting the provisions in a manner to mean that unless the domestic relationship continues on the date of the application, the provisions of the said Act cannot be invoked. The words "has been" and the words "have lived" have been used for the purpose of showing the past relationship or experience between the concerned parties. To interpret the said provisions so as to mean that only subsisting domestic relationship are covered would result in turning the provisions of the said Act otiose. As is well settled by the judgments of the Apex court in cases of beneficient legislations, an interpretation which furthers its purpose must be preferred to the one which obstructs the object

and paralyses the purpose of the Act. Reference could be made to the judgment of the Apex Court reported in (2009) 14 SCC 546 : (AIR 2010 SC 1253 ; 2010 Lab IC 1104) the matter of Union of India v. De-vendra Kumar Pant and others. Apart from that a literal construction of the provisions would show that even if the woman was in the past in a relationship she would be entitled to invoke the provisions of the said Act. The words "has been" or "have lived" appearing in the definitions are plain and clear and therefore effect would have to be given to them. In the instant case, the Petitioner who is the aggrieved person and the Respondent No.1 had lived together in the shared household when they were related by marriage. The Petitioner through divorced continued to stay in the shared house hold till she was allegedly forcefully evicted by the Respondent No.1, she would therefore be entitled to invoke the provisions of the said Act, as the Petitioner and the respondent No.1 are squarely covered by the provisions of the said Act."

16. In view of this settled legal position, the applicant

would be squarely covered by definition of 'aggrieved person' as well as by the definition of 'domestic relationship'. Therefore, the submission made on behalf of the non-applicant that she would not be entitled to get any relief under the D.V. Act cannot be sustained.

17. The learned Advocate for the non-applicant relied upon the decision in the case of ***Sejal Dharmesh Ved Vs. The State of Maharashtra and others,*** reported in ***2014 All MR (Cri) 636***. In this case, the coordinate Bench of this Court was concerned with the wife who had returned from USA and lived in India for one year. After one year she had filed application under the D.V. Act. In the facts situation, it was held that she could file any application under the D.V. Act with regard to that relationship after one year. In my view, on facts this decision is distinguishable. This decision was cited before the learned Sessions Judge. The learned Sessions Judge in view of the law laid down by Hon'ble Apex Court in the case of ***Juveria Abdul Majid Patni vs. Atif Iqbal Mansuri and***

another reported in ***2015 All MR (Cri) 2912 (SC)*** found that application under the D.V. Act would be maintainable. It is to be noted that the decision relied upon by the learned Advocate for the non-applicant has to be considered by keeping in mind the law laid down in the case of ***Smt. Bharati Naik v. Shri Ravi Ramnath and Halarnkar and another (supra)***. In this his case, it is held that the literal construction of the provisions would show that even the woman who was in the past, in a relationship, would also be entitled to invoke the provisions of the D.V. Act. Therefore, I am of the view that the submissions advanced by learned Advocate for the non-applicant cannot be accepted.

18. The next important issue is with regard to the quantum of maintenance. Learned Sessions Judge has enhanced the maintenance in the appeal from Rs.7,500/- to 16,000/- per month. The grievance is made that this enhancement is not justifiable inasmuch as there is no concrete evidence about the income of the non-applicant. The

non-applicant has admitted in his cross-examination that he is Chemical Engineer by profession and since 2005 he has been working as Chemical Engineer in Saudi Arabia. He has also admitted that he has 14 years experience in the field as Chemical Engineer. The applicant has stated that the non-applicant is Chemical Engineer and is working with J.G.C Gulf International Company At Alkhubar City in the Saudi Arabia. His monthly package is approximately 20,000 Riyals along with other benefits, which is equal to Rs.3,50,000/- in Indian currency. It is the case of the non-applicant that he is getting monthly salary of Rs.50,000/- to Rs.60,000/-. It is to be noted that while quantifying the monthly maintenance payable to the applicant, his monthly salary of Rs.64,500/- has been taken into consideration. This monthly salary was mentioned in the affidavit filed by the father of the non-applicant on his behalf. It is to be noted that on the application made by wife during the pendency of the appeal a direction was sought to the non-applicant to file a detailed affidavit of assets and liabilities. The learned Sessions Judge

in view of the law laid down in the case of ***Rajnesh Vs. Neha & Ors.*** reported in ***AIR 2021 SC 569*** by his order dated 12.08.2021 directed the applicant/wife as well as the non-applicant/husband to file their respective affidavits of assets and liabilities. The wife filed the affidavit and the statement of her assets and liabilities. The non-applicant filed the affidavit of his father. In this affidavit, it is stated that his monthly income is Rs.64,500/-. The learned Sessions Judge keeping this conduct of non-applicant in mind has drawn adverse inference against him and held that it was nothing but an attempt to suppress the material evidence. It is further seen that the learned Sessions Judge despite drawing adverse inference against the non-applicant took his monthly income of Rs.64,500/- into consideration for quantifying the monthly maintenance of the applicant. Learned Judge relied upon the decision in the case of ***Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy*** reported in ***AIR 2017 SC 2383*** and observed that the wife is entitled for maintenance to the extent of 25% of the income of her husband. Based on this

decision, the learned Sessions Judge quantified the monthly maintenance payable to the applicant. The legal position in this decision is well settled. It is observed in this decision that the grant of maintenance to the extent of 25% of the husband's net salary would be just and proper. In my view, on this count also there is no error or perversity on the part of the learned Sessions Judge while accepting the claim of the applicant.

19. It is to be noted that the non-applicant is Chemical Engineer. He is working in Saudi Arabia. He has suppressed from Court his actual income. The applicant cohabited with the non-applicant in Saudi Arabia for almost 11 years. In her evidence, she has stated that they were residing in a posh locality. She has stated that in Saudi Arabia along with the non-applicant she led standard lifestyle. It is to be noted that the wife is entitled to lead the life and maintain the lifestyle and standard which she has was accustomed to while staying with the husband. The wife has right to lead the life befitting the lifestyle and standard of the husband. On any ground the

husband cannot be allowed to question the wife on such count. The learned Sessions Judge awarded the monthly maintenance at the rate of Rs.16,000/-. The applicant has been residing with her parents. Her younger son is staying with her. The maintenance awarded to the son is at the rate of Rs.2,500/- per month. The applicant is at the mercy of her parents. Non-applicant did not make any provision for her maintenance. It is necessary to state that while quantifying the maintenance the price index and comparative the prise rise of the essential commodities needs to be borne in mind. In my view, by applying any criteria to the standard of living, the applicant is accustomed to, the maintenance quantifying by the learned Sessions Judge would satisfy the bare minimum needs of the applicant.

20. Therefore, in my view, there is no substance in the revision. The submissions advanced by the learned Advocate for the non-applicant on all counts cannot be accepted.

21. The Criminal Revision is therefore, devoid of merits and as such, Criminal Revision is dismissed.

Rule stands discharged.

JUDGE

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