

Received on : 10.10.2022.
 Registered on : 10.10.2022.
 Decided on : 11.08.2023.
 Duration : YY MM DD

**IN THE COURT OF THE SESSIONS JUDGE, AMRELI
 AT AMRELI**

CRIMINAL APPEAL NO. 52 OF 2022

Exh.

1. **Sanjaybhai Bhartabhai Mavi**
 Aged : 30 years, Occu. : Service.
2. **Bhartabhai Badiyabhai Mavi**
 Age : 50 years, Occu. : Service,
3. **Chaturiben Bharatbhai Mavi**
 Age : 45 years, Occu. : Service,

Above all residing at :

Kotdasangini, In the farm of Dhirubhai Rudabhai Shiyal
 Kotdasangini Ribda Chowkdi Road, Tal. : Kotdasangini, Rajkot.

.. .. **APPELLANTS**

VERSUS

1. **Ilaben W/o. Sanjaybhai Bhartabhai Mavi**
 Aged : 30 years, Occu. : Service,
 R/o. : Vandaliya, Tal. Babra, Dist. : Amreli.
2. **The State**
 (Notice through District Government Pleader, Amreli)

.. .. **RESPONDENTS**

**APPEAL U/s. 29 OF THE PROTECTION OF WOMEN FROM
 DOMESTIC VIOLENCE ACT, 2005 AGAINST THE JUDGMENT & ORDER
 DATED 02.05.2022 PASSED BY THE COURT OF THE LEARNED JUDICIAL
 MAGISTRATE FIRST CLASS, BABRA IN CRIMINAL MISC.
 APPLICATION NO. 60/2021.**

Appearance :-

Mr.J.B.Khuman, learned advocate for the appellants

Mr.S.A.Dabhi, learned advocate for the Respondent No. 1

Ms.M.R.Trivedi, learned A.P.P. for the Respondent No. 2

:: J U D G M E N T ::

1. While invoking the provisions of **Section 29** of the Domestic Violence

Act, 2005 ("**ACT**" for short), the present appellants –original opponents have filed the present appeal against the judgment and order passed by the Learned Judicial Magistrate First Class, Babra (for the sake of brevity and convenience hereinafter referred to as "**Learned Magistrate**" for short) in Criminal Misc. Application No. **60/2021** on **02.05.2021** wherein the Learned Magistrate has been pleased to partly allow the various reliefs sought for by the applicants therein under the provisions of Domestic Violence Act.

STATUS OF THE PARTIES

2. In the present appeal, for the sake of convenience and brevity, hereinafter, the parties would be referred as per their original status of the case i.e. **appellants - original opponents** and **Respondent No. 2 - original applicant**.
3. The short facts leading to the present appeal are that :-
 - 3.1 It is the case of applicant that the applicant hails from Lathi Taluka and the marriage of the applicant was solemnized with the Opponent No. 1 - **Sanjaybhai Bhartabhai Mavi** as per their customary rites and rituals three years prior to filing the application in question at Alirajpur District and soon after the marriage, she resumed cohabitation at her matrimonial house situated at the cited address. It is further the case of the applicant that in the initial period of her matrimonial life, everything was going on nicely and smoothly and the applicant was taken care of by her in-laws, but later on, on account of internal disputes ventilated between the family of her husband, due to which she was maltreated and subjected to harassment on various counts and even on tiny points and forced to bring money / articles from her parental house and further pressurized her to fulfill all their demands or to leave the matrimonial house, however, prior to filing the application, she was also forced to leave the house. Though, she was

reluctant to leave her matrimonial house, despite, she had to go for twenty-five days and thereafter, by way mutual understanding and compromise, again she returned to her matrimonial home to stay and started a new life.

3.2 It is further alleged that when she returned to her matrimonial home, no changes were made in their habit and nature and her husband and in-laws used to abuse, threaten, starve and humiliate her with no reason, but in order to maintain her dignity and happy married life, the applicant tolerated all the acts and misbehaviour of her in-laws and kept herself mum, but no changes were made in their behaviour and callous attitude. Meanwhile, out of their legal wedlock, the applicant born a baby child namely - Kajalben. It is further alleged that under the guise to bring money from her parental home, the applicant was pressurized and thereafter, one day turned out from the matrimonial house by her in-laws and since then, the applicant has been constrained rather compelled to live at her parental house situated at Babra and now is depending upon his father who is not enough stable financially to maintain her daughter.

3.3 It is further contended that the at present the applicant is residing at Babra at her parental house which is a rented premises and the financial condition of her father is not good so also no efforts were made on the part of the opponents to resolve the dispute by way of compromise or communication. It is further the say of the applicant that the opponents are living in Saurashtra for so many years and possess vast property in the form of immovable properties and thereby, earning Rs. 45,000/- per month and they are financially very strong and sound. Thus, in view of the aforesaid humiliation and violence on the part of the opponents, the applicant was constrained to file the question Domestic Violence Applicant against the opponents therein before the Magisterial Court seeking reliefs under

the provisions contained in **Sections 12, 18, 19(B),19(F), 20, 21 & 22 of the Protection of Women From Domestic Violence Act, 2005.**

4. On being served with the process of the question Criminal Misc. Application No. 60 of 2021, the opponents appeared through their counsel and filed the written reply at **Exh. 7** inter alia, denying and resisting all the allegations levelled by the applicant against the opponents and submitted that no any pressure tactics in the form of harassment has ever been caused to the applicant. On the contrary, she does not want to stay with opponents and voluntarily left her matrimonial house. It is further submitted that the present application has been filed by raising false and concocted facts only to harass and humiliate the opponents which has no nexus whatsoever and therefore, the application of the applicant is liable to be rejected at threshold.
5. After hearing the learned advocate for the respective parties and perusing the entire material **comprising in the form of pleadings, documentary and ocular evidence, the Learned Magistrate has been pleased to partly allow the application** preferred by the applicant and granted monetary relief of maintenance and other reliefs.
6. Being aggrieved and dissatisfied by the said order, the appellants qua opponents have challenged the same by way of this appeal and inter alia contended that the order of the Magisterial Court is not correct. The Magisterial Court has decided the question application without entering into the merits. The order thus, itself is arbitrary. The Magisterial Court has failed to consider that the allegation against the present appellants qua opponents is baseless and far from the truth.

6.1 It is also contended that the Learned Magistrate has failed to

consider the income and economic responsibility of the appellants. At the time of arguments, the learned advocate for the appellants qua opponents has reiterated the contentions which are raised by them in the appeal memo. While the learned advocate appearing on behalf of the respondents qua applicants has contended that the order of the Trial Court is correct and as per law and does not require any interference at the hands of this Court.

ISSUES FOR CONSIDERATION OF THIS COURT

7. The following Issues have arisen for my consideration :-
1. **Whether the judgment & order passed by the Learned Magistrate in Criminal Misc. Application No. 60 of 2021, dated 02.05.2022 is erroneous, without application of mind, perverse and against the principle of law ?**
 2. **Whether the Order of Maintenance is on higher side?**
 3. **What Order?**
8. I answer to the aforesaid issues as ascribed hereinbelow.
- (1) **In Negative.**
 - (2) **In Negative.**
 - (3) **As per final order.**

:: REASONS ::

ISSUES NO.1 & 2:

9. The Issue Nos. 1 & 2 are interconnected and intertwined that deciding them separately will result in repetition of unnecessary facts, hence, in order to avoid such repetition and for the sake of brevity both the issues are taken up together for adjudication.

10. At the very outset it is worthwhile to mention here since the issue between the parties appears to be of matrimonial in nature and it is not in dispute that the marriage between the Appellant No. 1 and the Respondent No. 1 are solemnized three years back and out of their legal wedlock, a baby child is born namely - Kajalben who is minor of two years of age. The marriage between the parties is not in dispute and both the parties have admitted the factum that they are legally wedded. Moreso, it reflects from the records that no any efforts has been made between the parties to resolve the matter amicably by way of mutual understanding or compromise to achieve peace and harmony.
11. I have perused the order of the Learned Magistrate so also the materials available for consideration. This Court is concerned with **Chapter IV** of the **Domestic Violence Act of 2005**. The relief which can be granted on an application under **Section 12** of the aforesaid Act can be broadly classified as under :-
- (i) Protection order under Section 18 which are for preventing the respondent from committing an act of Domestic Violence;*
 - (ii) Residence orders under Section 19;*
 - (iii) Monetary relief under Section 20 which includes maintenance, loss of earnings, medical expenses and loss caused due to destruction, damage or removal of any property from the control of aggrieved person;*
 - (iv) Custody orders.*
 - (v) Compensation orders under Section 22.*
12. The Protection of Women from Domestic Violence Act is implemented as there was no sufficient law to safeguard the interest

of married women and the provision of interim maintenance is implemented with a view to see that during the pendency of the application, the applicant could get sufficient means to sustain herself and she can represent her case in a reasonable manner.

13. Now, reverting back to the facts of the case on hands and considering the rival submissions and considering the matter judicially. The applicant appeared before the Magisterial Court and deposed in her examined-in-chief that she is legally wedded wife of Opponent No. 1 and she was subjected to mental and physical cruelty by the opponents on one or another counts. It is pertinent to note that Opponent No. 1 - husband in his reply has denied the entire allegations and contended that the no such overt acts as alleged by the applicant therein have been made with the applicant nor she has been tortured. However, in order to prove their say, nothing material has been brought on record by the opponents. Merely by raising oral contention and defending the matter without producing any leading or cogent evidence is no ground to allow the appeal of the appellants and also, the appellants - opponents have not made any effort to resolve the matter amicably with the applicant therein. Therefore, the conduct of the appellants is self-explanatory to suggest the acts and inactions committed on the part of the appellants with the applicant therein. Thus, the Learned Magistrate after considering all the factors and nature of has rightly granted a monthly maintenance to the tune of Rs. 2,500/- to the applicant under the provisions of Section 20 of the Act for the reasons which seems to be proper and plausible and does not require any interference at the hands of this Court.
14. Moreso, after perusing the entire documentary as well as ocular evidence, the Learned Magistrate **has opined and concluded that there appears a domestic violence and the applicant was**

subjected to mental and physical agony, thereby, under that circumstances the applicant is entitled for compensation towards mental and physical harassment. Hence, this Court is in complete agreement with the reasonings and conclusion arrived at by the Learned Magistrate concerned which do not requires to be revisited. Accordingly, I answer issue No.1 & 2 in **Negative**.

ISSUE NO. 3

- 15.** Thus, in view of the aforesaid reasons, I am of the view that the impugned order is just, legal and proper and requires no interference by this Court. Hence, this appeal lacks merits and is required to be dismissed. Accordingly, I pass the following order :

:: O R D E R ::

- 1. The present Criminal Appeal stands dismissed.**
- 2. R & P, if any, called for be sent back to the Trial Court forthwith along with the copy of this order.**
- 3. Yadi of this order be sent to the concerned Magisterial Court.**

Pronounced in the open Court today on this **11th** day of **August, 2023.**

DATE : 11.08.2023
A M R E L I

(M.J. PARASHAR)
SESSIONS JUDGE,
AMRELI
UI Code No.GJ00463.