

MHDH010033272022



Exh.No. : 19

Presented on : 10.10.2022.
Registered on : 10.10.2022.
Decided on : 02.04.2025.
Duration : 02Y.05M.22D.

In the Session Court, Sessions Division, Dhule

(Presided over by Mr.D.M.Aher)

Criminal Appeal (P.W.D.V.Act) No.72/2022.

Appellants :

1. Anil Jagannath Jadhav,
Age : 43 yrs. Occu. : Hotel Field worker,
2. Jagannath Keshav Jadhav,
Age : 72 yrs. Occu. : Retired,
3. Bebibai Jagannath Jadhav,
Age : 65 yrs. Occu. : Nil,

All R/o. : Room No.112, First Floor,
Vitthal Co-operative Housing Society,
Shivroad, Ulhasnagar-1, Dist.Thane.

4. Suvarna Santosh Ahire,
Age : 42 yrs. Occu. : Private Service,
R/o. : Century Riyon Colony,
Kalyan, Dist.Thane.
5. Sulochana Jagannath Jadhav,
Age : 40 yrs. Occu. : Housework,
R/o. : Near Diwa Junction
Railway Station, Diwa, Dist.Thane.
6. Varsha Jagannath Jadhav,
Age : 36 yrs. Occu. : Housework,
R/o. : Mandarli road, Badlapur (W),
Dist.Thane.

7. Sunanda Vijay Baviskar,
Age : 49 yrs. Occu. : Housework,
R/o. : 3rd Floor, Vitthal Co-operative
Housing Society, Shivroad,
Ulhasnagar-1, Dist.Thane.
8. Vijay Vitthal Baviskar
Age : 54 yrs. Occu. : Service,
R/o. : 3rd Floor, Vitthal Co-operative
Housing Society, Shivroad,
Ulhasnagar-1, Dist.Thane.

Versus

- Respondents** :
1. Sunita Anil Jadhav,
Age : 38 yrs., Occu. : Private tuition,
 2. Tanishq Anil Jadhav,
Age : 18 yrs., Occu. : Education,

Both R/o.:C/o Gautam Dinkar Sonawane
67, Kalikadevi Nagar, Sakri road,
Dhule.
 3. The State of Maharashtra,
Through : The learned A.P.P.,
Dhule.

For Appellants	: Ld. Adv. Mr.A.U.Mohite.
For Respondent Nos.1 & 2	: Ld. Adv. Mr.D.S.Sonar.
For Respondent No.3	: None

JUDGMENT

(Delivered on 2nd April, 2025)

The appellants (original non-applicants) are assailing the judgment and order dated 15.09.2022 passed by learned J.M.F.C. (Court No.3), Dhule, in Criminal Miscellaneous

Application No.1226/2015, whereby the learned J.M.F.C. partly allowed the application of respondent Sunita and granted her the reliefs of protection order, maintenance at the rate of Rs.2,000/- p.m. each to her and her son Tanishq and compensation of Rs.10,000/- towards mental pain and trauma (*For the sake of convenience, the parties are referred by their initial names*).

Background facts of the appeal :

2. Respondent Sunita filed above numbered application in the Court of learned J.M.F.C. Dhule for several reliefs under Protection of Women from Domestic Violence Act (P.W.D.V.Act for short). Sunita pleaded that she married with appellant Anil on 11.11.2003 and resumed cohabitation with him. The original non-applicants No.2 to 8 are the relatives of Anil. From the said wedlock, they begotten son namely Tanishq. It is stated that initially for six months, Anil and his relatives treated Sunita properly. However, thereafter they started demanding Rs.2,00,000/- from her for constructing a bungalow. They started harassing and beating Sunita to satisfy the said demand. In the meantime, Sunita became pregnant. She went to her parents house Dhule for delivery. She delivered a male child. However, neither Anil nor his relatives came to see her and her son. On the persuasion of her father, Anil resumed cohabitation with Sunita. However, he and his relatives again ill-treated her. Sunita failed in CET examination of teacher. On that count also Anil and his relatives abused and beat her. Sunita became pregnant for second time. Anil and his relatives were forcing

her for abortion. On 26.06.2010, Anil severely beat her. She became unconscious. Anil and his relatives taken out the ornaments from the person of Anita and drove her out of the house. She came at her parents house. She lodged the report against Anil and his relatives under section 498-A of the I.P.C. It is stated that Sunita requires monetary relief for her and her son's maintenance. Anil is serving as Manager in 'Dolphin Club' five-star hotel at Ulhasnagar. He gets the salary of Rs.35,000/- to 40,0000/- per month. He is capable to provide the monetary reliefs. Hence, Sunita filed the application under P.W.D.VAct for the protection order, monetary relief, alternate residence, return of stridhan articles, prohibitory order to restrain Anil and his relatives from alienating the shared household and compensation for mental pain and trauma.

3. Anil and his relatives opposed the application vide reply Exh.8. They denied that they subjected Sunita to domestic violence. They pleaded that Sunita was not interested to cohabit with Anil. She and her parents used to insult Anil and his parents. Sunita became pregnant for second time. She on her own accord went to her parents' house for delivery. However, she got aborted the child. Thereafter, she filed false report under section 498-A of the I.P.C.. Anil is working in the Hotel and he gets the meager salary of Rs.3,000/- p.m. On the other hand, Sunita is highly educated. She takes private tuition and earns good income. She is capable to maintain herself and Tanishq. With this pleadings, Anil and his relatives prayed to reject the application.

4. Before the learned J.M.F.C., Sunita examined herself and filed some documents. In rebuttal, Anil examined himself and filed documents. The learned J.M.F.C. after examining the pleadings and evidence held that Anil and his relatives have subjected Sunita to domestic violence. The learned J.M.F.C. also held that Sunita has no sufficient source of income. Hence, learned J.M.F.C. passed the protection order and directed Anil to pay maintenance of Rs.2,000/- p.m. each to Sunita and her son and compensation of Rs.10,000/-. However, the learned J.M.F.C. refused the reliefs of alternate residence, return of Stridhan articles and prohibitory order to restrain Anil and his relatives from transferring shared household.

5. Aggrieved by the aforesaid judgment and order, Anil and his relatives have filed this appeal under Section 29 of P.W.D.V. Act.

6. Sunita appeared and filed cross objection. She has prayed to grant her the reliefs of alternate residence, return of Stridhan articles and prohibitory order to restrain Anil and his relatives from transferring the shared household. She has also prayed for enhancement of the maintenance amount.

Submissions :

7. The learned advocate Mr.A.U.Mohite for the appellants (Anil and others) filed written notes of argument Exh.16. It is submitted that Sunita failed to state the dates of alleged demand and harassment. It is submitted that the appellants are

acquitted from the offence under section 498-A of the I.P.C. and it shows that the said report was false. It is submitted that there was no domestic violence to Sunita. It is submitted that appellant Nos.2 to 8 had no concern with Sunita and allegations against them are false. It is submitted that the learned J.M.F.C. has failed to consider these aspects. It is also submitted that as per salary slip Anil is getting meagre salary of Rs.12,000/-, from which he is already paying Rs.8,000/- to Sunita and Tanishq as per the order of the Family Court. It is submitted that in such circumstances further grant of maintenance is burdensome to Anil. Hence, learned advocate for the appellants prayed to allow the appeal and to set aside the impugned judgment and order.

8. On the other hand, the learned advocate Mr.D.S.Sonar for the respondents (Sunita and Tansihq) has filed written notes of argument Exh.18. It is submitted that there is sufficient evidence to prove the domestic violence on Sunita and the finding in that regard is correct. It is submitted that considering the needs of Sunita and Tanishq, the amount of maintenance is inadequate and it may be enhanced. It is submitted that the learned J.M.F.C. has erred in refusing the reliefs of return of stridhan articles and alternate residence. It is submitted that as per evidence Anil and his parents have retained the ornaments of Sunita and hence the order of return of stridhan articles may be passed. It is submitted that Anil and his parents are likely to transfer the shared household and hence prohibitory order is necessary against them. It is submitted that the appeal of Anil may be dismissed and the cross objection of Sunita may be allowed.

9. In the light of aforesaid facts and submissions, the following points arise for my determination. I have recorded my findings thereon for the reasons to follow as under.

<u>Sr.No</u>	<u>POINTS</u>	<u>FINDINGS</u>
01.	Whether Sunita has proved that Anil : and his relatives have caused domestic violence to her?	..Yes.
02.	Whether Sunita is entitled for the : protection order?	..Yes.
03.	Whether Sunita is entitled for the : monetary relief of maintenance from Anil, though she is granted maintenance in the proceeding under section 125 of Cr.PC.?	..Yes.
04.	Whether Sunita is entitled for the : order of enhancement of monetary relief?	..No.
05.	Whether Sunita is entitled for the : alternate residence or for rent towards alternate residence?	..No.
06.	Whether Sunita is entitled for the : return of her stridhan articles from Anil and his relatives ?	..No.
07.	Whether Sunita is entitled for the : order to prohibit Anil and his relatives from transferring the shared household?	..No.
08.	Whether the impugned judgment : and order passed by the Ld. J.M.F.C. needs interference?	.. No.

09.	What order ?	:	.. The appeal and cross objection are dismissed.
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REASONS

As to Point Nos.1 and 2 :-

10. I have scrutinized the evidence of Anil and Sunita. Sunita A.W.1 in her evidence reiterated the contents of her application. She is cross-examined. She could not state the dates of alleged incidents of domestic violence. However, she has clarified that the said incidents were happening repeatedly. Therefore, it is but natural that she would not have been able to state the dates of incident of domestic violence. She has also clarified that there was no improvement in the fetus and hence the fetus was aborted. She has denied the rest of the suggestions. Thus, nothing has come in the cross-examination of Sunita A.W.1 to discredit her positive version.

11. On the other hand, Anil R.W.1 has reproduced the contents of his reply in the evidence. He stated that Sunita A.W.1 was not willing to cohabit with him and she left his company without any reason. However, this statement of Anil R.W.1 is unreliable. Anil R.W.1 has admitted that his marriage with Sunita A.W.1 was performed as per their wish. It is the matter of record that Sunita A.W.1 cohabited with Anil R.W.1 for considerable long period and begotten one child. She was also become pregnant for the second time. It is the matter of record that after first separation, Sunita A.W.1 had again resumed cohabitation with

Anil R.W.1. This falsifies the case of Anil R.W.1 that Sunita A.W.1 was not willing to cohabit with him and that she left his company without any reason. Thus, the evidence of Anil R.W.1 is not trustworthy.

12. The evidence shows that Sunita A.W.1 had filed application U/Sec.125 of the Cr.P.C. in the Family Court. The learned Family Court Judge has recorded the finding that Anil R.W.1 has neglected and refused to maintain Sunita A.W.1. It seems that the said judgment is not challenged. Thus, the finding therein had attained finality. The said finding supports the case of Sunita A.W.1 about causing domestic violence to her. The term domestic violence has a wide meaning. It cannot be restricted to the proof of the incident of beating. It covers all such incidents, which causes harassment to the wife. Thus, I am satisfied that Sunita A.W.1 has established that Anil and his relatives subjected her to domestic violence. As such, Sunita A.W.1 is entitled for the relief of protection order. The learned J.M.F.C. had rightly held so and granted protection order to Sunita A.W.1. Hence, Point Nos.1 and 2 are answered in the affirmative.

As to Point No.3 :-

13. Anil and his parents have caused domestic violence to Sunita A.W.1. Therefore, she is also entitled for monetary relief U/Sec.20 of P.W.D.V.Act, which includes a maintenance. Section – 20(2) of the P.W.D.V.Act provides that the monetary relief granted under this section shall be adequate, fair and reasonable

and consistent with the standard of living to which aggrieved person is accustomed. It is clear that Sunita A.W.1 and Anil R.W.1 were residing in metro city, where the cost of living is high as compared to other cities. There is absolutely no evidence to show that Sunita A.W.1 used to take tuition and used to earn money. On the other hand, Anil A.W.1 is serving in the hotel situate in metro city. Thus, he is capable to provide maintenance to Sunita A.W.1 and his son Tanishq. The learned J.M.F.C. granted the maintenance at the rate of Rs.2,000/- p.m. each to Sunita A.W.1 and Tanishq. It is true that Sunita A.W.1 and Tanishq have been already granted maintenance at the rate of Rs.4,000/- p.m. each by Family Court, Dhule. However, the learned J.M.F.C. was aware of the said fact. The learned J.M.F.C. decided to grant additional amount towards maintenance. The law does not prohibit from granting such additional maintenance in other proceeding.

14. It is the case of Anil that his salary is only Rs.12,000/- p.m. and the amount of additional maintenance is burdensome. However, the salary certificate produced by Anil R.W.1 has no basis. The person issuing the certificate is not examined. Anil R.W.1 has not filed his bank statement to disclose his true income. Anil R.W.1 is serving on a managerial post in a big hotel in the metro city. His income must have been more than Rs.25,000/- p.m.. The similar is the observation of the learned family court Judge. Considering the same, I do not find that the amount of maintenance granted by the learned J.M.F.C. would

be burdensome on Anil R.W.1. The learned J.M.F.C. has rightly granted maintenance to Sunita A.W.1 and Tanishq. Hence, Point No.3 is answered in the affirmative.

As to Point No.4 :-

15. Sunita has claimed the enhancement of the maintenance amount. However, it is clear that as per the order of family court, she is granted maintenance of Rs.8,000/- p.m. for herself and Tanishq. She is granted additional maintenance by the learned J.M.F.C. of Rs.4,000/- p.m. for herself and Tanishq. Thus, the total maintenance amount of Rs.12,000/- p.m. is adequate and reasonable. Hence, I am not inclined to enhance the maintenance amount. Therefore, Point No.4 is answered in the negative.

As to Point No.5 :-

16. Section – 19(f) of P.W.D.V.Act empowers the magistrate to direct the husband to secure same level of alternate accommodation for the aggrieved person. However, in the present case, Sunita A.W.1 has been granted total amount of maintenance of Rs.12,000/- p.m. for herself and Tanishq. This amount of maintenance includes the cost to secure the alternate accommodation. Therefore, I am not inclined to grant alternate accommodation or amount of rent of alternate accommodation to Sunita. Hence, Point No.5 is answered in the negative.

As to Point No.6 :-

17. Section – 19(8) of P.W.D.V.Act empowers the Magistrate to direct the respondent to return the stridhan articles to the aggrieved person. However, in the present case, Sunita A.W.1 made vague statement that her golden ornaments are in the custody of Anil R.W.1. She has not given the description of said ornaments. She did not file the purchase receipts of the said ornaments. In the absence of such evidence, the order of return of stridhan articles cannot be passed. The learned J.M.F.C. has rightly refused the said relief. Hence, Point No.6 is answered in the negative.

As to Point No.7 :-

18. Section – 18(e) of P.W.D.V.Act empowers the Magistrate to prohibit the respondent from alienating any assets or any other properties held either jointly by the parties or separately by them without the leave of the Magistrate. However, Sunita led no evidence about the description of the said property. Neither there is pleading nor there is documentary evidence about the said properties. On the other hand Anil R.W.1 has filed copy of leave and licence agreement. It seems from the said agreement that Anil R.W.1 and his family members are residing in the said premises on rent. They do not appear to be the owner of the said property. As such, no prohibitory order can be passed in respect of the said house property. The learned J.M.F.C. has rightly

refused the said relief. Hence, Point No.7 is answered in the negative.

As to Point Nos.8 and 9 :-

19. The fall out of the aforesaid discussion is that the learned J.M.F.C. has properly appreciated the evidence and granted the relief of protection order, and maintenance order to Sunita. The said orders require no interference. Hence, the appeal of the appellants is liable to be dismissed.

20. Similarly, Sunita has failed to make out a case for enhancement of maintenance amount and for the reliefs of alternate residence, return of stridhan articles and prohibitory order. The application was dismissed on 19.10.2016 for want of prosecution and it came to be restored in the year – 2019. Moreover, Sunita A.W.1 and Tanishq were already getting the maintenance as per the order of family court. In view of this, the learned J.M.F.C. has granted the maintenance from the date of order. I do not find any illegality in the said order. Thus, the cross-objections of Sunita is also liable to be dismissed. Hence, Point No.8 is answered in the negative. In the result, in answer to Point No.9, following order is passed.

ORDER

1. The appeal stands dismissed.
2. The cross objection filed by Sunita is also dismissed.

3. In the facts and circumstances of the case, the parties to bear their respective costs of the appeal.

(The record and proceeding of Cri.M.A.No. 1226/2015 be sent to learned J.M.F.C., (Court No.3) Dhule, with the copy of present judgment and order).

(D.M.Aher)

Additional Sessions Judge

(Court No.5), Dhule.

Date : 02.04.2025.

-x-x-

CERTIFICATE

I certify that the contents of this P.D.F. File are word to word as per Original Judgment/Order.

Name of the Stenographer : J.S.Jain.
Name of the Court : Court of District Judge-5, Dhule
Order directly typed on dias : 02.04.2025.
computer.
Order checked and signed by : 03.04.2025.
Presiding Officer
P.D.F. Uploading Date : 03.04.2025.

Sd/- xxx

Stenographer(Grade-I)