



Varsha Amitkumar Desai & Ors. Vs. Amitkumar Pandit Desai.

Order passed below at Exh.No.5.

This is a Petition filed U/Sec.12 of the Protection of Women from Domestic Violence Act, 2005 (in short, “the DV Act”) *inter alia* filed present Appln. U/Sec.23 of “the DV Act” for grant of various *interim* reliefs viz. (a) maintenance (b) rent (c) handing over educational documents of the children (d) not to alienate flat standing in the name of the NA and (e) provide police aid to the Applicant.

Contentions :

(a) Allegations : From the wedlock with the the NA, the couple blessed with 2 daughters and one son. The NA ill treated her, not permitted to peruse her further education. Had extra marital relation with one Muslim girl (though disclosed, name not printed here). For job purpose, the NA went to Korea, leaving Applicant No.1, which caused her loneliness and depression. The NA levelled nasty allegations about her character, thereby, involving one XYZ (though disclosed, name not printed here). After some days, the NA took Applicant No.1 at Korea where miscarriage took place as she was required to do all works like preparation of food, serving of food. The NA snapped her objectionable photographs in DSLR camera and uploaded those on Facebook. He under the false pretext of modeling, bring the private life of Applicant No.1 on social platform, which caused mental agony to her. The NA compelled her to conceive pregnancy. The NA is having extra marital relationship with one ABC (though disclosed, name not printed here). The NA use to sent obscene messages. Deserted her along with three kids, refused and neglected to maintain them.

(b) Income source : The NA is highly qualified, holding higher post in MNC. Drawing salary in lakhs. Possess luxurious flat worth Rs.1 Cr. At village, possess agri. land and two story bungalow.

2. The NA has strongly resisted the Appln. by filing his Say at Exh. No. 10. He raised so many points; some amongst them reads thus.

(i) Applicant No.1 dislikes him. On flimsy reasons, she used to raise quarrel. He always supported her, thereby, projecting her socially by creating portfolio for modeling, however, she did not.

(ii) Applicant No.1 established extra marital relationship with XYZ, a guy working with One mobile shoppe. (though disclosed, name not printed here).

(iii) Beside that, she also indulged in extra marital relationship with XYZ resident of Hyderabad. Applicant No.1 also having extra marital relationship with one of the relative XYZ (though disclosed, name not printed here).

(iv) Applicant No.1 was so rude, arrogant and aggressive towards in-laws. She used to insult them.

(v) She didn't support film making, a passion of the NA. *Per contra*, the NA always motivated her in her modeling career.

(vi) All the time, she was busy in chatting that too vulgar and indecent, with unknown persons, on social media. She was/is leading adulterous life. Didn't take care of kids.

(vii) She was taking suspicion on his character, by making allegations that he is having extra marital relationship.

(viii) She herself become an obstacle in quality education of their children.

(ix) When all the family was infected by Covid-19 virus, she didn't take care; on the contrary, was busy in her immoral activities, online chatting.

3. **Undisputed facts :-**

(i) Relationship between the parties.

(ii) The couple blessed with three kids viz two daughter and one son.

(iii) For custody of children, NA filed Appln. No.26/2022, in the Hon'ble Dist. Court under the provisions of the G&W Act.

(iv) Issuance of Notices/reply by the NA to Applicant No.1 and *vice versa*.

(v) The NA owns his residence at Khargar. Initially was serving with L & T Company, thereafter, with another mnc.

(vi) Applicant No/s.2 and 3 both were taking education in Radcliffe School, Khargar, Navi Mumbai.

(vii) The NA filed Petition for desolation of marriage.

4. Heard both the sides. Perused. Both the sides filed Assets and Liability affidavits in compliance of directions as given in Rajneesh V/s. Neha. (Cri.Appeal No.730/20).

5. The Children are taking education in Radcliffe School, Khargar, Navi Mumbai itself shows that, financial condition of the NA is sound. He is not disputing his higher qualification (M.Tech.), service in mnc, his monthly income and residential accommodation at Navi Mumbai. However, his main grievance is that, Applicant No.1 is more guilty in deserting him which, directly affect the education of their children. He made very bold allegations about chastity of Applicant No.1. He has disclosed **THREE** names with whom Applicant No.1 is having extra marital relationship. The NA is not raising any question about legitimate or illegitimate minor child; on the contrary, he admitted the relationship. Not only that, from the various documts placed on the record, as a common father, he appears to be more possessive about the childrens' future. He also knocked the doors of Hon'ble Dist.Court for getting custody of two daughters.

6. In this case, on the face of record, it appears that, owing to ego or otherwise between the spouse, sufferer are the children. A Child who is taking education in a highly reputed School, affiliated to CBSE, due to dispute between the parents, caused to exit from that school. With pain, I pen that, it is big defeat of spouse. They both are responsible, guilty and answerable for spoiling the bright future of their kids. Verdict (whatever it may be) in such types of cases is not “V” for either party; but, truly speaking its knockout defeat of both father and mother of innocent child. Law is not magic where black turn into white and *vice versa*. Judges are not alien; they are also part of the society. (with pain I mention that, I put my – studious, courteous, conscientious, patient, punctual, just, impartial, fearless of clamor, regardless of praise, indifference and tried at my level best to convince the parties to arrive at settlement, for the sake of bright future of kids; however, all is vain). This Court, put its best efforts for settlmt. Initially, parties agreed thus reasonable time has been given to them but futile. Still the Court was hopeful; because the husband offered separate residence for the wife and children at Navi Mumbai. Still, Applicant No.1 not worked out. As the Court was hopeful in settlement AND was of the view that once orders passed on *interim* Appln., much

obstacles would creates in amicable settlement, I CONFESS, I intentionally and deliberately citing different reasons, postponed to pass an immediate order on *interim* Appln.. But, now, I have no option but to decide the Appln on its own merit.

7. Every trial is voyage of discovery in which truth is the quest. Main trust of argument of learned Adv for the Applicants is that the NA is guilty of refusal and neglect to maintain his wife and children. In CRA No. 233/18 recently on 16.03.2023 the Hon'ble Bom.High Court, observed the test to prove the domestic violence and refusal and neglect to maintain are different. There were no provisions in the DV Act to test the refusal and neglect to maintain. The concept of DV is specific as provided in DV Act. It could not be compared with the concept of Sec.125 of the Cri.PC. Considering the concept of refusal and neglect and granting the maintenance to wife in DV Act case is out of jurisdiction and exaggeration.

8. Perused definition of DV as envisaged in Sec.3 and allegations made in the Petition. Some allegations levelled by the Applicants, at first blush not appears to be genuine one. She contended that, NA did not come to take her at korea. As a prudent man, it appears to me, when husband for earning went abroad, firstly he prefer to settle there, find suitable accommodation, make all provision and then give call to his spouse to join him. Is there straitjacket formula that he again board flight, visit motherland and escort his wife. Contention of Applicant is that, वि.प. यांनी अजय नावाच्या त्याच्या मित्रासोबत अर्जदार यांना कोरीया येथे येण्याचे सांगितले. अर्जदार यांना विमान प्रवासाचा तसेच परदेश जाण्याचा अनुभव नसल्यामुळे नाईलाजास्तव अनोळखी व्यक्तीबरोबर जीव मुठीत घेवून प्रवास करणे भाग पडले. I am unable to understand actually what Applicant wants to convey by mentioning “नाईलाजास्तव” “अनोळखी व्यक्तीबरोबर जीव मुठीत घेवून”. “navilaj” means she has no option except to do this. For the first time when newly married bride traveling by an air, that too, going abroad, where her husband is earning, in general, mentality of every bridge is full of joy and excitement; however, in this case, what was nawilaj for Applicant No.1, she

not disclosed. She has not elaborated whether she experienced bad in the company of NA's friend – Ajay. One thing is clear that, at Korea, only two members (Applicant No.1 and NA) were residing. She contended that, due to reasons जेवण करणे, जेवण वाढणे ही कामे एकटीला करावी लागत therefore, miscarriage took place. To be honest, such types of contentions at first blush, not appears to be acceptable one. I have searched on the internet but, not come across that, uptill now, miscarriage took place due to preparation of food for the husband or serving the food to the husband. These unfounded accusation caused this court to see between the lines. She further contended that, by uploading her photo on social media, वि.प.यांनी तिचे वैयक्तिक आयुष्य सर्वासमोर मांडले. She herself admitted that, NA himself purchased DSLR camera, snapped her photo, NA dreamed to produce a movie, even with his brother he attempted and produced one movie; further he use to write scripts for movie. At this stage, it is not acceptable that, a M.Tech (highly educated guy), whose earning is sound, who was serving abroad, who is passionate to film industry, who motivated his wife to do the modeling, who purchased DSLR camera for her, would project his own wife on social media, indecently. Regard must be had that, Applicant No.1 is not only wife of NA but mother of his three children. Mere uploading some photographs of his wife on social platform; does it mean अर्जदाराचे वैयक्तिक आयुष्य सर्वासमोर मांडले, अर्जदाराच्या प्रायव्हसीचा भंग झाला व त्यामुळे विनाकारण अर्जदारास मनस्ताप भोगावा लागला. Answer is obvious. What mental agony Applicant No.1 suffered, nothing mentioned. According to me, especially at abroad permitting the wife to wear fancy dress, participate in the advertisement of sari, do photo shoot etc etc is not DV, on the contrary, it shows that, the educated NA was giving free hand to his wife. We need to read these contentions with the SPECIFIC ALLEGATIONS levelled by the NA that, she was leading adulterous life, having extra marital relations with three different guy and was always busy on the social media/chatting. Conspectus, narration (as mentioned above) is vague in nature. Thereby, we cannot termed it as a DV.

9. In this case, admittedly the NA is highly educated – M.Tech., even as per contention of the Applicants, he is serving at उच्चपदावर and getting monthly salary of Rs.2 lacs. Still, in the Petition, Applicant No.1 exhibited how much she respected her husband by contending that, he is गावंढळ आहे, आडाणी आहे. So far as claiming the relief of maintenance, according to her NA is serving at उच्चपदावर and getting monthly salary of Rs.2 lacs but as regards respecting her husband, it is her stand that, he is गावंढळ आहे, आडाणी आहे, व्याभीचारी. This shows that, Applicant No.1 is not having least respect towards her husband.

10. It is not know, what is the basis to state that, वि.प.यांनी तिच्यावर मातृत्व लादल. Because, in next breath she admits, NA appointed care taker when she conceived. She made allegations of unchestity against her husband as she allegedly saw him at 6.00 a.m. coming from the room of care taker. She formed her opinion that, it means त्यांच्यामध्ये शरीरसंबंधाचे नाते आहे.

11. I have minutely perused the allegations/reply made in Notices issued by Mrs.Savita Karnik, Adv and Mr.Kirwale, Adv. It appears that, the NA tried to resume the cohabitation by sending notice through Mrs.Karnik, Adv. An efforts on the part of the Applicant No.1 is that, she lodged NC case against the NA. She fairly admitted that, when the NA was affected by COVID-19 Virus, she left him alongwith children. This suggest, when sorrow comes from door; she jumped from window.

12. A highly educated husband who is father of three children is not disputing his relation with children however, made a very bold allegation about chastity of wife that, she is leading adulterous life. Wife is also making allegations against husband of same nature.

13. Morality and legality are two different things. No doubt, adultery is a gender-neutral term and the act of adultery can be committed by both men as well as women. Even otherwise it takes two to tango, so no why the liability should be fixed on only one.? Thus, unless evidence is adduced, parties faced the cross examination, adverse and bold contentions cannot be accepted as a gospel truth.

14. In this case, some photostat copies are placed on record; from which it appears that, by way of short messages, the NA has used very objectionable, unpolite and unparliamentary language to Applicant No.1. But, on the face of record it appears that, pick & choose theory is applied. All the messages – generated, transmitted and reply given thereto are not placed on record. Whether there was manipulation, tampering with, what is its genuineness, from which gadget it created, to whom it were transmitted, certification thereof etc etc all these points will be decided after full fledged trial.

15. From the available record, avarements made, prima facie we cannot record concrete finding that, Applicant No.1 as not victim of dv, exploitation at the hands of NA. To know comprehensively that the Applicant No.1 really faced the DV in the nature of abuse, threat, violence either physical, sexual, verbal, emotional, economical or the harassment, full fledge trial is necessary. It is always said that, the Judiciary must hear those who cannot shout, listen to those who cannot speak. Who is/was leading adulterous life, what is evidence to show that, is it disqualification to get any relief under the DV act and all cognate aspects will be taken into consideration after full fledge trial. At this initial stage, we cannot make an endorsement of either true or false on the serious allegations, levelled by Applicant No.1 against her husband and vice versa. If did so, it would amounts to pre judge the matter on its own merit. At initial stage, mini trial cannot be conducted. Let both the parties to prove adverse contentions; cat will be out of the bag.

16. Allegations are yet to be proved. In this case, maintenance @ Rs.6000, Rs.3000/- and Rs.2000/- per month for Applicant No/s.2 to 4 is claimed. Considering the higher education, standard of living and monthly income of the NA (more than 1 ½ lakh p.m.), without adverting more, I am inclined to allow the same for the children. No doubt, even a professional beggar or a blind husband has a moral and legal liability to maintain his wife. But, merely on the basis of admitted relation as wife, *ipso facto* not

mean that, she is entitled therefor. At this stage, we cannot record finding that, she on her own deserted her husband, refused to join his company. Though, she is facing the serious allegations of chastity, in peculiar circumstances of the case, my conscious not permit to reject interim maintenance to the wife. Am not inclined to allow it, but not as claimed. Because DV maintenance is not for wife's luxury, should be judicious, not arbitrary. It is not case that they are living separately by mutual consent. According to me, even a prudent man or a person of general sense easily can infer that, such a highly qualified NA ought to have get handsome income by utilizing his intellectual. I must mention here that, living separate from the husband and claiming handsome maintenance amt is not sufficient. At trial, she has to prove, why she is not cohabiting with the husband, why she scattered the peaceful and joyful family, what she did for reunion, whether she inquired about her in laws in past few years, whether she for a single day (during last some years) give pleasure of wifes company to her husband. She cannot opt pick and choose theory. She has to take rose alongwith thorn.

17. Be that as it may be, to maintain his wife, is not only obligatory but a moral duty of a husband. He cannot left his wife to live at the mercy of other. Let's prove the dv. Let us NA to prove she is leading adulterous life NOT WITH ONE but with THREE DIFFERENT PERSONS. At culmination definitely cat will be out of bag. Purpose to grant the maintenance is to prevent the destitution or vagrancy. She is blaming not only the husband but his entire family and vice versa. It will be considered at appropriate stage.

18. Conspectus of the above, as relationship between the parties is undisputed, as the NA is earning handsome income from his salary, the court is going to grant the fullest interim maintenance (as claimed) to the children, the court is also ordering the house rent (as claimed), the court is also directing the NA not to cause domestic violence upon Applicant No.1 at her present residence HOWEVER, considering the nature of allegations

and passive conduct of Applicant No.1 to resume the cohabitation, she is not entitled to get maintenance, as claimed.

19. In this case, the NA is not disputing that, he possess one Flat at Kharghar. Absolutely nothing is placed on record that, NA is intending to sell/alienate/mortgage or transfer it. Except bare words, no evidence is adduce in that respect. In case of Rajan V/s Siji, the Hon'ble Kerala HC, Ernakulam Bench while deciding Cri.R.PNo.366/2014 on Dtd 24.07.2014 observed that, the husband cannot be prohibited or restrained from alienating his property because it is his civil right. In this case, it is not Applicants' case that, the NA is not permitting them to reside in a flat. *Per contra*, it appears that by issuing the Notices, the NA has called Applicant/s to resume cohabitation. They are not claiming right of residence in that flat. Thus, relief (v) in that respect, thereby prohibiting the NA from alienating the Flat cannot be granted.

20. As regards withholding the educational documents, nothing is placed on record. *Prima facie* I do not see that, the NA is guilty for that. On that contrary, it appears that, the NA is much worrying about the education of children. Recites of Petition filed under the Guardian & Wards Act, depict the same. I appeal to both soul and brain; also perused the available record. It is not acceptable that, NA (father) tries to ruin the career of his children by withholding the educational documts. Had it his intention, he could not admitted his daughter in very prestigious school. Allegations appears to be vague in nature, hence, relief/s (iii) and (iv) can not be granted. However, liberty to revive the prayer if exigency arises.

21. Further as regards threat; suffice to mention, nature of allegations is vague. Way in which criminal intimidation was given not asserted. Hence, relief (vi) – Police Protection cannot be granted. However, restrictions can be clamped upon the NA that, thereby, restraining him from causing domestic violence upon Applicant No.1 at the place, where now she is residing. Hence, *interim* relief (vi) can be allowed partly.

22. As NA is not disputing the relationship with the Applicant and as it is admitted fact that, as on today, Applicants are not residing with NA, they cannot be left to live at the mercy of others. I repeats that, allegations levelled by the husband against the wife are very serious. He has specifically gave name/s with whom, she is leading extra marital life. Applicant No.1 is not only wife of NA but, mother his three children. The NA appears to be a responsible, highly educated person thus, those allegations cannot be easily ignored. Definitely those will be considered and if after full fledged trial, those are proved, stern orders will be passed, in the wake of observations made by the Hon'ble Apex Court in authoritative pronouncement Krushna Bhattacharya V/s Sarthi Chaudhari, which reads thus :- it is duty of the Court to scrutiny facts is justice to the cause equivalent to the salt of ocean should be kept in mind. The Court of the law is about to the uphold truth which sparkles when justice is done. Hence, at this initial stage, I refrain myself from made any concrete findings, pass the following order :-

ORDER

1. N.A.No.1 Amitkumar Desai do pay interim maintenance @ Rs.6,000/-, Rs.6,000/- Rs.3000/- and Rs.2000/- per month to Applicant No/s.1 to 4, respectively, from the date of filing of this Petition.
2. N.A.No.1 Amitkumar Pandit Desai is directed to pay an amt of Rs.5,000/- per month to Applicant/s towards rent. Sum to be calculated from the date of filing of this Petition. It be paid before 10th day of each month.
3. N.A.No.1 Amitkumar Pandit Desai is directed not to cause any domestic violence to the Applicant/s – especially Applicant No.1, at the place, at present where she is residing.
4. N.A.No.1 Amitkumar Pandit Desai is directed to pay lump-sum amt of Rs.5000/- to the Applicants' towards the expenses of this Appln.
5. Copy of this order be supplied to the Applicant/s, free of costs.

6. Both the sides are called upon to co op the Court for expeditious disposal of this case.
7. Except the circumstances beyond the control of the parties, no adjournment shall not be granted. Fullest endeavour will be made for expeditious disposal of this Petition.
8. Nothing shall be construed as discussion on merit/de-merit of the case; this order being interlocutory one, will have no binding affect on final hearing of the Petition.

(Ganesh Ambadas Ghule)
JMFC, Ichalkaranji.
Dist.Kolhapur.
J.O.Code : 2594.

Date : 23-05-2023.