



Received on :25.08.2022
Registered on :25.08.2022
Decided on :18.10.2024
Duration :2Y1M13Ds.

**IN THE SESSIONS COURT,
AT:LATUR**

Present:S.T.Tripathi,
Additional Sessions Judge, Latur,
[Date of Judgment:18.10.2024]

**CRIMINAL(PWDVA) APPEAL
NO. 11/2022.**

EXH.

- 1. Rashid s/o.Shamsher Khan Pathan,**
Age.45 Years, Occ.Lbour
R/o.Parli (V), Tq.Parli, Dist. Beed.
- 2. Shamsher Khan s/o.Habib Khan Pathan,**
Age.67 Years, Occ.Labour.
- 3. Julekha w/o.Shamsher Khan Pathan,**
Age.60 Years, Occ.H.H.
- 4. Shabbir s/o.Shamsher Khan Pathan,**
Age.39 Years, Occ.Labour.
Appellants 2 to 4 are residing at
Bardapur, Tq. Ambajogai, Dist. Beed.
- 5. Shahjadi w/o.Mustak Shaikh,**
Age.47 years, Occ.H.H.
R/o.Malad, Malvani, Mumbai.
- 6. Subhani w/o.Ajgar Pathan,**
Age.51 Years, Occ.H.H.
R/o. Malad, Malvani, Mumbai.
- 7. Salman s/o.Ajagar Pathan,**
Age.29 Years, Occ.Labour,
R/o.Malad, Malvani, Mumbai.
- 8. Jalal s/o. Akabar Beg,**
Age.36 Years, Occ.Labour,
R/o.Parli (V), Tq.Parli, Dist.Beed.

**Appellants
(Original
respondents)**

Versus

- 1. Masrat w/o.Rashid Pathan,**
Age.31 Years, Occ.Service.
- 2. Ashmira d/o.Rashid Pathan,**
Age.13 Years, Occ.Education.

**Respondents
(Original
applicants)**

- 3. Aliya d/o.Rashid Pathan,**
 Age.7 years, Occ.Education,
 R/o.No.2 and 3 are Minor under
 guardian of Respondent No.1
 All R/o. Bradapur, Tq. Ambajogai, Dist.
 Beed. at present c/o.Ajgar Mohammad
 Rasulsab Sayyad, Near Bouddh Vihar,
 Bouddh Nagar, Latur

Appearance:

Mr.W.Y.Sayyad, for the appellants.
 Mr.S.V.Shaikh, for the respondents.

**Learned
 Advocates.**

Judgment

(Delivered on 18th Day of this October,2024)

. This is an appeal u/s.29 of the Protection of Woman From Domestic Violence Act (for short the 'D.V.Act') against the judgment and order passed on 03.01.2022 by the 5th Judicial Magistrate First Class, Latur (for short 'the learned trial court) in Criminal M.A.No.190/2019 by which the application for injunction and maintenance was partly allowed. Hereinafter, the parties will be referred to, by their nomenclature, in the application, for the purpose of convenience and clarity.

2. Briefly, stated the facts of the applicants' case are that;

i) Applicant 1 got married with non applicant 1 on 07.05.2007 as per Muslim's customs and rites and two daughters are born from the said wedlock.

ii) After marriage, she went to matrimonial house for cohabitation. The non applicants started harassing her physically and mentally and taunting her by saying that their family were not respected in the marriage. They suspected on her character. In September, 2007 they expelled her out of matrimonial home.

iii) After six to seven months, when she returned to her matrimonial home again they started suspecting on her

character. On 27.5.2009 she gave birth of a daughter. Due to this, they again started harassing her.

iv) On 03.06.2015 when she came to Solapur on her job. On 11.10.2015 she gave birth of another daughter. Thereafter non applicants started abusing her, kept her on starvation and caused domestic violence physical and mental cruelty. They suspected on her character, alleging that she had illicit relation in her office, threatening to throw acid on her, directed her to leave the job and demanded Rs.10,00,000/-. They also threatened to commit suicide and throw acid on her face, and thereby subjected her to domestic violence.

v) Non applicant 1 is the member of joint family having ancestral agriculture property at village Bardapur Dist.Beed, big mansion and earning Rs.10,00,000/- to Rs.12,00,000/- p.a. Non applicant 1 is electrician and also gets Rs.1,00,000/- p.m.,by working on contract basis. Since 23.01.2019 applicant is residing at her maternal home. Her daughters are taking education. She has very limited salary from her job which is very difficult for maintaining her. She is not able to maintain herself and their children. Applicants have sufficient means and able to maintain, provide maintenance and are causing physical and mental cruelty and domestic violence. Hence, the petition.

3. The non applicants remained absent despite service of notice. Hence, the application proceeded without their say.

4. In order to prove the contention of applicant she has examined herself as AW-1 (Exh.9), AW-2 Anwar afsar Pathan (Exh.10). Applicants have filed certified copy of 7/12 extract of Gat Nos. 972, 1099, 1100/3, 1100/2, 979, 981, 975 (Exh. 27, 28 and 29) respectively, certified copy of R.C.C.No.125/2019 (Exh.16) filed by applicants. Certified copy of

R.C.C.No.985/2018 (Exh.18) and closed her evidence. Non applicants have not examined witness in their defence. Considering the evidence on learned J.M.F.C. partly allowed the application and granted Rs.5,000/- p.m. towards maintenance to the applicants and Rs.10,000/- cost of the application.

5. Being aggrieved and dissatisfied with the same, present appeal has been preferred, on the grounds that summons was not served upon the respondents as they were not residing at the given address. Due to Covid-19, they could not attend the Court. Because of lack of knowledge, they did not appear before the learned trial court. There was no evidence in respect of the income of the respondent husband. He is not at all engaged in agricultural business or any electric work nor he is earning Rs.1,00,000/-p.m. On the contrary, the applicant/wife is doing permanent job in M.S.E.D.C.L. Latur and is able to maintain herself and both the minor children. The rest of the defendants are very poor and doing labour work such as washerman at washing center at Parali. They have not committed any kind of domestic violence or harassment to the applicants. Hence, it is prayed to remand the matter to the trial Court.

6. Heard learned Advocates of both the sides. Points for determination along with their respective findings for the reasons are discussed hereunder.

	POINTS	FINDINGS
1.	Does the impugned order calls for any interference u/s.397 of Cr. P.C. ?	Yes.
2.	What order?	This appeal stands allowed.

Reasons

Points: 1 & 2

7. As the above points are inter-dependent on each other, they are discussed simultaneously, for the sake of convenience and to avoid repetition.

8. Learned advocate of the respondent submits that summons was not served upon the respondents as they were not residing at the given address. Due to Covid-19, they could not attend the Court. Because of lack of knowledge, they did not appear before the learned trial court. There was no evidence in respect of the income of the respondent husband. He is not at all engaged in agricultural business or any electric work nor he is earning Rs.1,00,000/-p.m. On the contrary, the applicant/wife is doing permanent job in M.S.E.D.C.L. Latur and is able to maintain herself and both the minor children. The rest of the defendants are very poor and doing labour work such as washerman at washing center at Parali. They have not committed any kind of domestic violence or harassment to the applicants.

9. Learned advocate S.V.Shaikh, for the applicants/respondents submits that notices have been properly served upon the respondents. They are residing on the same address. They have appeared before Police in response to notice u/s. 41(a) executed upon the same address and executed bond u/s. 107 of the Cr.P.C. In the Family Court also they appeared in response to summons on the same address. Hence, he prays to dismiss this appeal.

10. I have gone through the aforesaid submissions. Perusal of record reveals that they have been properly served.

However, according to, respondent 1 husband he is not earning as alleged by the respondent's wife. Rest of the respondents are labour and anyhow earning their livelihood. Due to illiteracy and lack of legal knowledge they could not appear before the Court. They are also sufferers of Covid-19 disease.

11. Mr. Sayyad, learned advocate for appellants relies on i) **Shabnam Parveen V/s. The State of West Bengal and others, [2018 (3) B Cr C 50] Calcutta High Court** wherein it is held that a muslim father-in-law, has no obligation to maintain the widow. ii) **A.K. Srinivasa Rao and others V/s. the State of A.P. [2016 91) B Cr C 167] Andhra Pradesh High Court** wherein it is held that when any person who is so related who has been not living or had not lived together at any point of time with the aggrieved person in a shared household and who has/had no domestic relationship cannot be made respondent, iii) **Renu Mittal V/s. Anil Mittal and others, 2010 (96) AIC 891 Delhi High Court** wherein it is held that if maintenance has been granted under Section 125, Criminal Procedure Code after taking into account entire material placed before the Court and recording evidence, it is not necessary that another Magistrate under Domestic Violence Act should again adjudicate the issue of maintenance and iv) **MD.Abdul Aziz V. Khairunnissa, A.I.R. (37) 1950 Bombay 245 [C.N.66]** wherein it is held that as per the Muhammadan Law the main principle is that a person is liable to maintain another when that person could be the heir of the person whom he is called upon to maintain. The father-in-law can never be the heir of his daughter-in-law, and therefore on that principle there is no obligation on the father-in-law to maintain the widow of his son.

However, the principles enunciated in the above case

laws can be applied only after adducing the evidence and not at this stage. Hence, above rulings are not applicable herein.

12. In the above backdrop, it is necessary that the matter shall be decided on merits so that interest of both the parties can be protected.

13. No harm or prejudice would be caused to the applicants if this application is allowed. On the contrary if this is not allowed, respondents would be subjected to irreparable loss, prejudice and injustice. Thus, there is no legal hurdle in allowing this application subject to cost Rs.10,000/-. This may also result in fair adjudication of dispute on merits. Resultantly the order dated 03.01.2022 needs to be set aside, and this matter is required to be remanded to the trial Court for decision on merits of the case by interference of this Court. Hence, finding stands recorded to point 1 in the affirmative and point 2 as under.

Order

1. This appeal stands allowed subject to cost of Rs.10,000/- which shall be paid within one month from the date of this order to the respondents wife and children of the appellant 1 Rashid Shamsheer Khan Pathan. In failure this order shall stand automatically vacated.
2. The order dated 03.01.2022 is hereby set aside and this matter is remanded to the trial court for decision, by giving full opportunity to both the sides.
3. Inform the learned J.M.F.C. accordingly.
4. Dictated and pronounced in the open Court.

Date: 18.10.2024

(S.T.Tripathi)
Additional Sessions Judge,
Latur.

