

CNR NO. MHTH060023632024



Presented on : 28/05/2024

Registered on : 28/05/2024

Decided on : 12/11/2024

Duration :00 Yrs, 05 months, 15 days

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, KALYAN ,
DIST-THANE

(Presided over by P.P.Muley)

P.W.D.V.A.APPEAL No. 35/2024

Exh No. _____

Mrs. Jagruti Rajesh Chavan
Age : 36 Years, Occ : Housewife,
R/o. : Room No. 309, Third floor,
Orchid Residency, Desale pada,
Dombivli (East), Taluka Kalyan,
Thane.

... **Appellant**

Versus

1. Mr. Rajesh Ramesh Chavan
Age : 36 years, Occ. : Service
2. Mrs. Aruna Ramesh Chavan
Age : 57 Years, Occ : Housewife,
Both R/at : Shrihari Building, A wing,
Fourth floor, Shankeshwar Palm,
Dombivli, Taluka Kalyan,
District Thane.
3. Mrs. Trupti Hitendra Rajpurkar
Age : 32 Years, Occ : Service,
R/at : Charms Paradise Building, Olimpas
C Wing, Room No. 502, Swapnanagari
Road, Near Ganpati Mandir, Titwala (East),
Taluka Kalyan, District Thane.

... **Respondent**

Claim : Criminal Appeal U/S. 29 of P.W.D.V.Act, 2005.

Shri. S. A. Holkar : Advocate for the appellant
Smt. S. U. Pawse : Advocate for the respondents

J U D G M E N T

(Delivered on 12th Day of November 2024)

01. The appellant / wife (original petitioner) has filed this appeal to challenge the order Dtd. 29/04/2024 passed by Ld. Joint Judicial Magistrate First Class, 3rd Court, Kalyan (Trial Court) in Cri.M.A. (PWDVA Application) No. 114/2022 whereby the Ld. trial Court rejected the maintenance application of appellant. (Parties are referred by their original nomenclature as before Ld. Trial Court).

02. Facts giving rise to the present appeal are as under :-

It is case of applicant Jagruti Rajesh Chavan that on 15/03/2021 her marriage was solemnized with Rajesh Ramesh Chavan. After marriage, her husband and in-laws treated her with cruelty. Nature of cruelty was physical and mental. There was demand of amount and golden ornaments. Applicant was asked to pay bill of photographer. During Covid, she lost her job. She was forced to do any job else to brought money from her parents. The parents of applicant were not allowed to meet the applicants. On 02/06/2021, non-applicant raised quarrel with the applicant and did not allow her to meet her father. He beat the applicant mercilessly and snatched her golden ring. On 08/06/2021 applicant had been at her home and saw her husband has vacated the room. On enquiry with the neighbourer, she

came to know that he has left the house. When applicant tried to contact the husband, he did not gave any reply and block her phone. On 13/06/2021 there was meeting to settle the differences. However in the said meeting there was demand of amount. Respondent / husband was not ready to maintain the applicant. Hence, she constrained to lodge present petition.

03. On the other hand, non-applicant duly served and appeared. He filed his reply and specifically denied the case of applicant / wife. He has not disputed relationship but contended that since the beginning applicant was not interested to cohabit with him. After marriage, she purchased a mobile phone of Rs. 30,000/- for her brother. While purchasing said mobile, he has contributed Rs. 20,000/-. As regard payment of photographer, it is his explanation that applicant herself has engaged said photographer and he was forced to pay Rs. 11,000/-. It was his contention that applicant was not doing any household work and was insisting for separate residence. She was giving abuses and also giving threat to lodge false police report. Applicant has made huge purchasing by using his credit card. On 02/06/2021, she called her brother raised quarrel with the husband and demanded divorce. Her brother also gave abuses. Applicant and her brother by taking undue advantage of his absence have taken all the household articles and left the house. He denied demand of any amount in the meeting dated 13/06/2021. There was no material to show existence of domestic violence. No domestic incident report was filed on record. According to him, due to non-existence of domestic violence grant of order of Ld. Trial Court refusing to grant maintenance is legal.

04. After hearing both the parties, though applicant claim monthly maintenance of Rs. 25,000/- Ld. Trial Court by order dated 29/04/2024 rejected maintenance application of the applicant. Being aggrieved said order, applicant / wife has filed the present appeal.

05. After considering the pleadings and documents on record, following points arise for my consideration. I am recording my findings against those points for the reasons discussed below.

Sr.No	POINTS	FINDINGS
1.	Whether the applicant proves that respondent has committed act of domestic violence ?	... Yes
2.	Whether the applicant is entitled for relief of maintenance as claimed ?	... Yes
3.	Whether the impugned order passed by the Ld. Trial Court warrants interference ?	...Yes
4.	What order?	... As per final order

REASONS

06. In support of case applicant filed copy of application with copy of impugned order and relevant documents which were filed before trial court. Ld. Advocate for the appellant relied upon judgment in the case of Catherine Edward Anthony Vs. Edward Samping Anthony and Anr., in writ petition No. 4966 of 2014.

AS TO POINT NOS. 1 TO 3 :-

07. The main grievance of the appellant petitioner / wife is about finding recorded by the Ld. Trial Court. It is submitted that while deciding application for interim maintenance. Ld. Trial Court failed to consider various aspect. Ld. Trial Court ought to have considered earning source of the husband. The Ld. Trial Court failed to consider wife / petitioner is not able to maintain herself. Therefore order passed by Ld. Trial Court requires to be altered.

08. In the present matter, there is no dispute as regard relationship in between the couple. Admittedly wife is residing separately. There is no dispute as regard date of marriage and date of separation. It reveals that it was main contention of the husband before Trial Court that applicant / wife reside with him for short period of about two and half months. Therefore in the said short period, no such domestic violence took place. It was contention of the respondent / husband that allegation made by the applicant / wife are vague. Ld. Trial Court while considering the prayer for interim relief taken into consideration the said aspect and refuse to grant any maintenance.

09. Having due regard to the contention raised on behalf of husband it is necessary to understand the legal term 'desertion'. In this regard, observations recorded in the case of Sandip s/o Gopinath Bhalke Vs. Aruna w/o Sandip Bhalke, 2009(6) Mh.L.J. 961 are very useful in this case legal term 'desertion' is interpreted. Term 'desertion' is practically separation of one spouse from the other with intention on

the part of deserting spouse of bringing cohabitation to an end. It also embodies that such separation should be associated without consent of the other spouse. The mere physical act of departure of one of the spouse, will not necessarily lead to infer that there was a desertion or withdrawal from the company.

10. It was contention of the respondent / husband that Ld. Trial Court granted relief without considering the fact that there is no existence of domestic violence. So far as the term “domestic violence” is concerned, it is wide enough. When section 3 of the Domestic Violence Act, defines “**Domestic Violence**”, it is clear that such violence is gender neutral. It is also clear that physical abuse, verbal abuse, emotional abuse and economic abuse can all be by woman against other woman. Domestic Violence is wide term, apart from “**physical abuse**” and “**sexual abuse**”, “**verbal and emotional abuse**” and “**economic abuse**” also constitute domestic violence. As held in the case of *Juveria Abdul Majid Patani Vrs Atif Iqbal Mansoori reported in 2015 (2) Mh.L.J (Cri) (SC) 509*. In the present case, after considering the nature of allegations made by the applicant observations recorded by the Ld. Trial court regarding existence of Domestic Violence cannot said to be perverse.

11. In the present case, Ld. Trial Court further observed that after separation on 02/06/2021 wife / applicant had filed complaint u/s. 498A of the I.P.C. against her husband / respondent. Taking into consideration said aspect, Ld. Trial Court goes on to record his

observation as to falsity of allegation and record the finding that within such short period no such domestic violence or cruelty took place. Therefore, refuse to grant daily maintenance. It is important to note here that there was no material before trial Court to hold that said complaint was false. When law gives authority to any person to set the law in motion by making complaint, it cannot said that the act of filing of complaint itself amounts to cruelty on the part of wife unless there is any finding by any competent court of law as to its falsity. So far as filing of such proceeding by wife is concern view express by Hon'ble Bombay High Court in *Deeplakshmi Sachin Zingade -Vs- Sachin Rameshrao Zingade's case reported in 2010(1) Mh.L.J 10* is helpful observing,

“when act permits the wife to approach the court and if remedy is availed of, such act should not be treated as an act of cruelty, otherwise in no case a lady can file any complaint, if filing of complaint is to be treated as an act of cruelty. Complaint file by wife against her in laws can never be consider as an act of cruelty unless it is found by positive evidence that it was a false complaint.”

12. As discussed above filing of proceeding by the wife u/s. 498A of the I.P.C., could not ispo-facto termed to be cruelty or willful desertion on the part of wife unless its falsity duly proved. Filing of complaint against husband and in-laws, it can never be considered as an act of cruelty unless it is found by positive evidence that it was false complaint. In the light of observations recorded in the case of Deeplakshmi (supra) submission made on behalf of respondent /

husband alleging cruelty / desertion due to filing of proceeding cannot said to be legally acceptable one.

13. So far as, non submission of domestic incident report is concerned complainant having two options to file complaint under the provisions of domestic violence Act. She can filed complaint through protection officer. Once complaint of domestic violence is brought before the authority through a protection officer, preparation of domestic incident report is necessary, however, if the complaint is filed directly to the Magistrate, Magistrate can grant relief in the absence of such report. In the case of *Prabha Tyagi Vs. Kamalesh Devi reported in (2022) 8 SCC 90* the Hon'ble Supreme Court held that the Act does not make it mandatory for aggrieved to make an application before Magistrate only through the protection officer or service provider. When an aggrieved person files application by herself or with an advocate assistance and not the protection officer or service provider, there would be no domestic report received by the Magistrate for consideration.

14. In the case of *Satish Chander Ahuja Vs Sneha Ahuja, (2021)1 SCC 414*, Hon'ble Supreme Court, pointing towards the consideration of application to Magistrate under Section 12, held that, consideration of DIR report does not mean that the Magistrate can pass orders solely relying upon the domestic violence incident report received by him from the protection officer or the service provider. In the case of *Sabah Sami Khan Vs. Adan Sami Khan, 2010 SCC OnLine Bom.1629*, the Hon'ble Bombay High Court held that a domestic incident report can not be made in case of any application

alleging domestic violence other than physical violence, e.g. **verbal or emotional abuse**. An application made under Section 18 and 19 of the Act may have to be considered based upon the facts of each case and not necessarily with the aid and assistance of any protection officer or service provider. It may be required to be considered only upon the application made to the court by the aggrieved person herself. In such a case no domestic incident report may be filed or may be necessitated. In short submission made on behalf of appellant / husband can not be said to legally sustainable one.

15. Applicant / wife claim maintenance on the ground of continuous ill-treatment and physical torture. Ld. Trial Court refuse to accept case of applicant. So far as standard of proof as to ill-treatment and torture in the matrimonial proceeding is concerned said aspect is considered by Hon'ble Bombay High Court in the case of **Devidas Gangaram Mundfhale Vs. Malanbai Devidas Mundfhale reported in 2016 (6) Mh.L.J. Cri. 384**. In this case, it is observed that normally legally wedded wife could not leave company of her husband and matrimonial house unless there are compelling circumstances. Fact of beating of wife by husband are hidden within four walls of husband and cannot be voiced only by wife after it becomes unbearable for her. No husband would admit that he beats his wife.

16. The Ld. Trial Court only on the basis of reply of husband blindly accept the contention raised on behalf of husband / respondent

as to source of income of the wife / applicant. So far as competency of respondent husband to pay maintenance is concerned it is not only legal but moral obligation of the husband to pay the same. To determine the maintenance, parties are required to furnish details which assist the Court to determine the controversy. Parties are under legal obligation to furnish detail information in compliance of judgment of the Hon'ble Supreme Court in the case of *Rajnish Vrs. Neha in criminal Appeal no. 730/2020 which is decided on 04.11.2020 arising out of SLP (CRI) 9503 2018*. Consequences of furnishing incorrect information or false information adversely affect their case. There is nothing disclosing husband while furnishing details in the present revision has disclosed the fact in his personal information. In short, procedural mandate has not complied with.

17. The term 'neglect' is very wide term. Having due regard to the facts involved in this matter, it cannot said that applicant / wife residing separately at her own accord. No well cultured Indian lady would left the company of her husband without any reason. As regard quantum of maintenance, it is well settled that the Magistrate has to keep in mind the income of husband and basic needs of the wife. Fact of income will within knowledge of husband only under Section 106 of the Evidence Act burden is caste upon the husband to produce evidence to that effect. Having due regard to the observations recorded in the case of **Nirajkumar and Devidas (supra)** findings recorded by Ld. Trial Court cannot said to be just, legal and proper.

18. So far as competency of respondent husband to pay maintenance is concerned it is true that respondent / husband is under obligation to pay the same. Though non-applicant / husband came with the defence that applicant competent to earn some amount by doing job, he cannot be permitted to escape from his legal liability. Though it is assumed that because of occurrence of domestic violence and neglect on the part of husband, applicant / wife constrained to do any job. The said fact would not automatically permit the respondent / husband to escape from his legal as well as moral obligation.

19. As regard quantum of maintenance, it is well settled that the Magistrate has to keep in mind the income of husband and basic needs of the wife and children. Fact of income will be within knowledge of appellant only under Section 106 of the Evidence Act burden is cast upon the appellant to produce evidence to that effect. Ld. Trial court after taking into consideration the income of appellant the learned Trial Court has rightly believed the positive submission of applicant that she has no source of income to maintain herself. Ld. Trial Court considered the fact that non-applicant earns substantial amount. Being wife applicant also entitled to live in the same standard as of non-applicant/appellant.

20. In this matter, respondent / husband came with the defence that applicant / wife having sufficient means, she earns money by doing job. Therefore there is no need to grant maintenance. It is important to note here that while considering prayer for grant of interim maintenance, the Ld. Trial Court ought to see only existence of

domestic violence and prima facie case. Detail enquiry as to all the contention is not expected. Ld. Trial Court in absence of any evidence accepted all the contention and hold that there is no existence of domestic violence. Therefore contention raised on behalf of respondent / husband is not legally sustainable.

21. So far as necessity of commission of act of domestic violence for entitlement for interim relief is concern, even likelihood of commission of domestic violence entitles aggrieved person for monetary relief under section 20 of the Act, 2005- as held by the Hon'ble Bombay High Court in the case of ***Kaviraj Dattatray Muslonkar Vrs. Rachana Muslonkar reported in 2017(4) Mh.L.J (Cri) 356.***

22. In the present case applicant filed application through her advocate before the court. Parties are under legal obligation to furnish detail information in compliance of judgment of the Hon'ble Supreme Court in the case of ***Rajnish Vrs. Neha in criminal Appeal no. 730/2020 which is decided on 04.11.2020 arising out of SLP (CRI) 9503 2018.*** The compliance of those directions procedural mandate should be taken into consideration. Moreover, as per case of applicant / wife before trial Court her husband is employed and earning Rs. 1,00,000/- per month. It appears that Ld. Trial Court also has not disputed the said quantum of income but taken into consideration the short period of cohabitation and non-existence of domestic violence during said short period. Moreover Ld. Trial Court observed that wife

is residing separately at her own accord. She was insisting for separate residence.

23. As discussed above, the term desertion is wide enough. Taking into consideration the facts of present case, it cannot said that wife is residing separately at her own accord. Having due regard to the relevant date, living standard of the parties, income source of the husband with the aspect of financial burden of parents and children, grant of monthly maintenance of Rs. 1,500/- would certainly meets the ends of justice.

24. After taking into consideration overall evidence there is sufficient material to hold that there is neglect on the part of respondent / husband. Petitioner / wife is not having sufficient source of income to maintain herself. Respondent being husband is under legal obligation to maintain his wife. Therefore findings recorded by the Ld. Trial Court cannot said to be legal. Hence, the present revision petition deserves to be allowed. Considering all these factors, I record my findings to point no. 1 to 3 in the affirmative and in reply to point No. 4 I proceed to pass the following order.

ORDER

[1] The PWDVA Appeal is allowed.

[2] Order passed by Ld. Joint Judicial Magistrate First Class, 3rd Court, Kalyan (Trial Court) below Exh. 5 in Cri.M.A. (PWDVA Application) No. 114/2022 dated 29/04/2024 is set aside.

- [3] Exh. 5 in Cri.M.A. (PWDVA Application) No. 114/2022 is partly allowed.
- [4] Mr. Rajesh Ramesh Chavan respondent / husband is directed to pay monthly maintenance of Rs. 1,500/- to the wife Mrs. Jagruti Rajesh Chavan from the date of application 28/05/2024.

Date:- 12/11/2024

Place:- Kalyan

(P.P.Muley)
Additional Sessions Judge – 6,
Kalyan