

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL REVISION APPLICATION (REVN) NO. 121 OF 2018

Smt. Sadhana w/o Hemant Walwatkar,
aged 42, Occ. Household, R/o C/o Shri
Nagoraoji Hiwarkar, Plot No.369,
Darshan Colony, Nagpur.

... APPLICANT

VERSUS

Hemant s/o Shalikramji Walwatkar,
aged 46, Occ. Electric Contractor,
R/o Plot No.6, Gorewada Road,
Uttam Nagar, Nagpur.

... RESPONDENT

....

Smt. Amruta A. Ghonge, Advocate (appointed) for the applicant.
Shri R.N. Sen, Advocate for the respondent.

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CORAM : M.G. GIRATKAR, J.

DATE OF RESERVING THE JUDGMENT : 03RD APRIL, 2019.

DATE OF PRONOUNCING THE JUDGMENT : 18TH APRIL, 2019.

JUDGMENT :

Heard. Admit. Heard finally with the consent of learned
Counsel appearing on behalf of the respective parties.

2. The present revision is against the judgment of 25th Judicial Magistrate, First Class, Nagpur in Miscellaneous Criminal Application No. 1087 of 2009 by which the application of the applicant came to be rejected vide order dated 20th August, 2015. The said judgment was challenged before the learned Sessions Judge, Nagpur in Criminal Appeal No. 235 of 2015. The said appeal came to be dismissed vide order dated 03rd August, 2017.

3. The brief facts, which give rise to filing of the present revision, can be summarized as under -

The applicant/wife had filed an application under Sections 12 and 18 of the Protection of Women From Domestic Violence Act, 2005 (hereinafter referred as “DV Act” for the sake of brevity). The applicant got married with respondent/husband on 15th July, 1999. She delivered two children out of the said wedlock. The respondent had filed petition for restitution of conjugal rights before the family Court. The matter was amicably settled and they started living together on trial basis. Respondent converted the petition for restitution of conjugal rights into divorce petition under Section 13 of the Hindu Marriage Act. Learned family Court allowed the said

petition and granted divorce on 30th June, 2008. In the year 2009, the application under Sections 12 and 18 of the DV Act was filed by the applicant alleging domestic violence on the part of the respondent/husband. The said application was resisted by the respondent on the ground that at the time of filing application, there was no domestic relation. She was not residing with him. She was not wife in view of the divorce granted on 30th June, 2008 and, therefore, her application is liable to be rejected. Both the parties adduced their respective evidence before the learned JMFC, Nagpur, who dismissed the said application by judgment dated 20th August, 2015. In appeal, learned Additional Sessions Judge, Nagpur recorded his findings that there was no domestic relationship and, therefore, the applicant is not entitled for relief under the DV Act.

4. Heard Smt. A.A. Ghonge, learned Counsel appearing on behalf of the applicant and Shri R.N. Sen, learned Counsel appearing on behalf of the respondent.

5. Smt. Ghonge, learned Counsel for the applicant, has submitted that the applicant is entitled for the relief even though she is

divorcee. In support of her submission, she has placed heavy reliance on the judgment of Hon'ble Apex Court in the case of Juveria Abdul Majid Patni .v. Atif Iqbal Mansoori and another (reported in 2014 (1) SCC, 736). In the case of Inderjit Singh Grewal .v. State of Punjab and another (reported in 2011(9) SCALE, 295), the apex Court has considered the judgment in the case of Juveria Abdul Majid Patni .v. Atif Iqbal Mansoori and another (cited supra) and recorded its findings in para 29 that domestic violence took place between January, 2006 and 06.09.2007 on which date FIR under Sections 498-A and 406 of the Indian Penal Code was lodged by the wife against her husband and his relatives. It is in this context, the apex Court has observed that even if it is accepted that during the pendency of the SLP, the wife has obtained exparte “khula” (divorce) under the Muslim Personal Law from the Mufti on 09.05.2008, the petition under Section 12 of the DV Act is maintainable.

6. In the present case, the applicant is not the wife from the date of decree of divorce i.e. from 30th June, 2008 and, therefore, there is no relationship as husband and wife between them at the time of filing of the application. The judgment in the case of Juveria Abdul

Majid Patni .v. Atif Iqbal Mansoori and another (cited supra) is considered by the apex Court in the case of Inderjit Singh Grewal .v. State of Punjab and another (cited supra), in which, it is observed that, “in the facts and circumstances of the case, the submission made on behalf of respondent No.2 that the judgment of decree of Civil Court granting divorce is null and void and they continued to be the husband and wife, cannot be taken note of at this stage unless the suit filed by respondent No.2 to declare the said judgment and decree dated 30.03.2008 is decided in her favour. In view thereof, the evidence adduced by her particularly the record of the telephone calls, photographs attending a wedding together and her signatures in school diary of the child cannot be taken into consideration so long as the judgment and decree of the Civil Court subsists. On the similar footing, the contention advanced by her counsel that even after the decree of divorce, they continued to live together as husband and wife and therefore, the complaint under the Act 2005 is maintainable, is not worth acceptance at this stage.”

7. The Hon'ble Apex Court has held that to entertain the petition under the DV Act, there must be relationship as husband and

wife. In the present case, the applicant/wife is no more wife from the date of judgment of family Court dated 30th June, 2008. During the pendency of petition under DV Act (Petition No. 1087 of 2009), learned trial Court had granted interim maintenance of Rs.1,000/- per month. The said order was challenged before the Sessions Court. The main issue before the Sessions Court as to whether the divorcee can claim relief under the DV Act. Learned Sessions Judge in Criminal Appeal held that there was no domestic relationship between the parties on the date of filing of the petition and accordingly set aside the order of interim maintenance. The order of Sessions Judge was not challenged and, therefore, it attained finality.

8. Smt. Ghonge, learned Counsel for the applicant has pointed the decision of this Court in the case of **Aradhana Walkade .v. Chandrashekar Vaidya and another (reported in 2014 ALL MR (Cri), 1658)**. Her Ladyship has held that, “both relationship between parties in existence as well as past relationship covered under definition of 'domestic relationship'. Hence, woman who is divorcee has remedy available to initiate proceedings under the Act.” In the cited decision, there was divorce between husband and wife. Husband

was paying amount of Rs.25,000/- for the daughter who was residing with the wife. He was continuously paying amount of Rs.25,000/- till August, 2011. Since then, he stopped paying the said amount. Therefore, it was contended by the wife (divorced wife) that as her child was deprived of maintenance, she thereby suffered economic abuse. Hence, it was held that the petition was maintainable even though it was filed by divorced wife. The facts in the cited decision are very much different and, therefore, it is not applicable in the case at hand.

9. In the case of *Dhananjay Ramkrishna Gaikwad and others .v. Sunanda Dhananjay Gaikwad and others (reported in 2016 ALL MR (Cri), 2291)*, there exists relationship as husband and wife. There was no divorce between them. Therefore, it was held that though she is residing separately, she can file application under the provisions of DV Act.

10. There is no dispute that the applicant/wife is no more wife from the decision of family Court in Petition No. A-410/2004 dated 30th June, 2008. The said decision is not set aside by the appellate Court

till date. Therefore, it is clear that at the time of filing of petition under the provisions of DV Act in the year 2009, the applicant was not the wife and, therefore, the petition itself was not maintainable. This Court, in the case of Jayesh Uttamrao Khairnar and others .v. State of Maharashtra and others (reported in 2010(3) Mh.L.J., 305), has held that, “decree of divorce was already granted by the competent Court. During the relevant period of one year or before filing of the application under the Act, there was no conjugal relationship between the petitioner No.1-husband and the respondent No.2-wife. There was no question of giving protection to respondent No.2 when she was not residing with the petitioners. Case of respondent No.2 did not fall under Section 20(1) of the Act. In view of absence of domestic relationship of the respondent No.2 as on the date of filing of the complaint, proceedings under the Act were not maintainable and were filed with mala fide intention to harass the husband and his relatives. Proceedings quashed and set aside.”

11. In the case of Harbans Lal Malik .v. Payal Malik (Criminal Revision Petition No. 253 of 2010, dated 29.07.2010), Delhi High Court has held that, “it is apparent that in order to make a

person as respondent in a petition under Section 12, there must exist a domestic relationship between the respondent and the aggrieved person. If there is no domestic relationship between the aggrieved person and the respondent, the Court of MM cannot pass an order against such a person under the Act.”

12. In the present case, there was no domestic relation on the date of filing of application under the DV Act and, therefore, the applicant/wife is not entitled for any protection under the said Act.

13. The Hon'ble Apex Court in the case of Inderjit Singh Grewal .v. State of Punjab and another (cited supra) has observed that, “there is no domestic relationship as husband and wife at the time of filing of petition. Therefore, proceedings under DV Act not maintainable.” In the present case, divorce was granted by the family Court vide order dated 30th June, 2008. Application under DV Act was filed in the year 2009. At the time of filing of application under the DV Act, the applicant was not the wife. There was no domestic relationship between them. Hence, orders passed by the learned JMFC, Nagpur and maintained by Additional Sessions Judge, Nagpur in

Criminal Appeal No. 235 of 2015 are perfectly legal and correct. There is no perversity or illegality in the impugned orders.

14. In view of the aforesaid facts, there is no merit in the revision and the same deserves to be dismissed. Accordingly, Criminal Revision Application is dismissed with no order as to costs.

15. Fees payable to the learned Counsel appointed for the applicant are quantified at Rs.3,000/- (rupees three thousand only).

JUDGE

*rrg.