Sanjay Bapurao Aarewar Vs Sangita Sanjay Aarewar

Criminal Revision Application No. 11 Of 2023

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Nov. 27, 2024

Acts Referred:
Code of Criminal Procedure, 1973 â€" Section 125#Protection of Woman from Domestic Violence Act, 2005 â€" Section 12, 12(1), 18, 19, 20, 22

Hon'ble Judges: Sandipkumar C. More, J

Bench: Single Bench

Advocate: Swati Kulkarni (Potey), Parita N. Lakhan

Final Decision: Dismissed

Judgement

Sandipkumar C. More, J

1. Heard finally with consent of learned Counsel appearing on behalf of the rival parties at admission stage.

2. The Applicant/husband has filed this Revision Application challenging the Judgment and order dated 27/4/2021 passed by the learned Additional

Sessions Judge, Kelapur in Criminal Appeal No. 20/2014, whereby the maintenance amount of Rs.1500/- per month is enhanced to Rs.3000/- per

month from the date of application i.e. 5/12/2012. The earlier maintenance amount of Rs.1500/- per month was granted by the learned Judicial

Magistrate First Class (Court No.2), Kelapur in Misc. Criminal Case No. 83/2012 filed by the Non-applicant/wife herein under Section 12(1) of the

Protection of Woman from Domestic Violence Act, 2005 (for short, Ã¢â‚¬ËœPWDV ActÃ¢â‚¬â„¢) for various reliefs under Sections 18, 19, 20 and 22 of the

said Act.

3. The learned Counsel for Applicant/husband submits that the learned appellate court has definitely erred in enhancing the maintenance amount of

Rs.1500/- per month to Rs.3000/- per month by ignoring the fact that there was no domestic relationship between the parties since 2009 and that

decree of divorce has already granted in favour of the Non-applicant/wife at her instance only. Thus, she raised an issue that after grant of divorce by

the competent court, the Non-applicant/wife is not entitled for any relief of maintenance under the provisions of PWDV Act, and for that purpose she

relied on the Judgment of this Court in the case of Sadhana Hemant Walwatkar V/s Hemant Shalikramji Walwatkar reported in 2019 SCC

OnLine Bom 659.

4. On the contrary, the learned Counsel for Non-applicant/wife strongly resisted the submissions made on behalf of the Applicant/husband. She

claimed that even after divorce the wife is entitled for relief under the provisions of PWDV Act. She heavily relied on the Judgment of the

HonÃ¢â‚¬â„¢ble Apex Court in the case of Prabha Tyagi V/s Kamlesh Devi reported in 2022(3) UC 1505.

5. In the light of submissions, I have gone through the documents on record along with the impugned Judgments and also the observations in the cited

Judgments. Chronology of the incidents indicates that marriage between the Applicant and Non-applicant had solemnized on 25/5/2005, but according

to the Applicant/husband, the Non-applicant/wife on her own, left his company and started residing at Pandharkawada, District Yavatmal with her

parents for last 13 to 14 years. She filed Misc. Criminal Case No. 83/2012 on 5/12/2012 with the learned trial court for the reliefs under the provisions

of PWDV Act including monetary relief. On the same day, she had also filed HMP No. 50/2012 in the Court of Civil Judge Senior Division, Kelapur

for getting divorce under Section 13 of the Hindu Marriage Act, 1955. The learned trial court, vide order dated 17/6/2014, granted maintenance at the

rate of Rs.1500/- per month to the Non-applicant/wife from 5/12/2012. However, during the pendency of that application, the learned Civil Judge

Senior Division, Kelapur had granted decree of divorce in favour of the Non-applicant/wife in HMP No.50/2012 on 13/1/2014. The order of granting

maintenance by the learned trial court was assailed by the Non-applicant/wife before the learned appellate court in Criminal Appeal No. 20/2014. The

said appeal was partly allowed, as mentioned above, and the maintenance amount of Rs.1500/- per month was enhanced to Rs.3000/- per month.

Hence, this Revision Application.

6. According to the learned Counsel for Applicant/husband, once the decree of divorce is granted, and that too, at the instance of Non-applicant/wife,

she is not entitled for any relief under PWDV Act, as there was no domestic relationship in existence between the parties. Thus, the only question

which needs consideration in the present Application is that, whether a divorcee is entitled for reliefs under PWDV Act for want of existence of

domestic relationship. The learned Counsel for Applicant/husband heavily relied on the Judgment of this Court in the case of Sadhana V/s Hemant

(cited supra), wherein following observation is made :

Ã¢â‚¬Å“In the presence 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 D.V. 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 legality in the impugned orders.Ã¢â‚¬‹

7. Under the aforesaid observation, it is evident that once the divorce is granted, then there cannot be any domestic relationship between the husband

and wife, and therefore, wife is not entitled for maintenance under the provisions of PWDV Act. However, the learned Counsel for Respondent

heavily relied on the Judgment of HonÃ¢â‚¬â„¢ble Apex Court in the case of Prabha Tyagi V/s Kamlesh Devi (cited supra) and submitted that the

HonÃ¢â‚¬â„¢ble Apex Court has dealt with particular issue involved in this matter and answered the same in favour of the Non-applicant/wife.

8. Admittedly, in the case of Sadhana V/s Hemant (cited supra), this Court was of the opinion that after passing the decree of divorce the wife is

not entitled to the reliefs claimed under the PWDV Act including the relief of grant of maintenance. However, the HonÃ¢â‚¬â„¢ble Apex Court in the

case of Prabha Tyagi (supra) has referred all the earlier Judgments on this aspect and analyzed the word Ã¢â‚¬Ëœdomestic relationshipÃ¢â‚¬â„¢, as noted in

PWDV Act. The HonÃ¢â‚¬â„¢ble Apex Court, specially in the case of Ã¢â‚¬ËœdivorceÃ¢â‚¬â„¢, has commented in respect of Ã¢â‚¬Ëœdomestic relationshipÃ¢â‚¬â„¢ in

paragraph No.43 (b) (ii) as under :

Ã¢â‚¬Å“(ii) In the event of a divorce, marriage would be no longer be subsisting, but if a woman (wife) is subjected to any domestic violence either during marriage or

even subsequent to a divorce decree being passed but relatable to the period of domestic relationship, the provisions of this D.V. Act would come to the rescue of

such a divorced woman also.Ã¢â‚¬‹

9. On going through the aforesaid observation, it is evident that even a divorcee is entitled to claim relief under PWDV Act, if it is related to the period

of domestic relationship with the husband and his relatives. Further the HonÃ¢â‚¬â„¢ble Apex Court in the aforesaid Judgment has framed three vital

questions involved in that case, which can be stated as under :

Ã¢â‚¬Å“(i) Whether the consideration of Domestic Incidence Report is mandatory before initiating the proceedings under Domestic Violence Act, 2005 in order to

invoke substantive provisions of Sections 18 to 20 and 22 of the said Act ?

(ii) Whether it is mandatory for the aggrieved person to reside with those persons against whom the allegations have been levied at the point of commission of

violence ?

(iii) Whether there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed ?Ã¢â‚¬‹

10. So far as first question is concerned, it is not involved in the present case, but the remaining two questions are important to decide the main

controversy in the present matter.

11. The learned trial court, while granting maintenance to the Non-applicant/wife has not dealt with the aspect of divorce. However, the learned

appellate court, though considered the aspect of divorce, but discarded the same, as the Applicant/husband had not raised such issue before the

learned trial court. Further the learned appellate court, by considering the definition of Ã¢â‚¬Ëœwife Ã¢â‚¬â„¢ under Section 125 of the Code of Criminal

Procedure, held her entitled for grant of maintenance. However, the aspect of Ã¢â‚¬Ëœdomestic relationship Ã¢â‚¬â„¢ vis-a-vis Ã¢â‚¬Ëœdivorce Ã¢â‚¬â„¢ was not

considered by the learned appellate court. However, while dealing with the aforesaid two questions, the Hon Ã¢â‚¬â„¢ble Apex Court has answered the

second question by holding that it is not mandatory for the aggrieved person, when she is related by consanguinity, marriage or through a relationship in

the nature of marriage, adoption or are family members living together as a joint family to actually reside with those persons against whom the

allegations have been levelled at the time of commission of domestic violence. Further while answering the third and most important question, the

Hon Ã¢â‚¬â„¢ble Apex Court has observed as follows :

Ã¢â‚¬Å“there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed vis-a-vis allegation of

domestic violence. However, it is not necessary that at the time of filing of an application by an aggrieved person, the domestic relationship should be subsisting.

In other words, even if an aggrieved person is not in a domestic relationship with the respondent in a shared household at the time of filing of an application

under Section 12 of the D. V. Act but has at any point of time lived so or had the right to live and has been subjected to domestic violence or is later subjected to

domestic violence on account of the domestic relationship, is entitled to file an application under Section 12 of the D. V. Act.Ã¢â‚¬â€‹

12. Thus, from the aforesaid observations, the Hon Ã¢â‚¬â„¢ble Apex Court, by considering the wide scope of definition of Ã¢â‚¬Ëœdomestic violence Ã¢â‚¬â„¢, has

clearly included a divorced wife to be entitled for the reliefs under Section 12 of PWDV Act. This Court, while dismissing the Revision Application of

husband against the grant of maintenance to divorced wife has followed the aforesaid Judgment of Hon Ã¢â‚¬â„¢ble Apex Court in the case of Gajanan

V/s Surekha Gajanan Rathod in Criminal Revision Application No. 290 of 2018 at Aurangabad Bench. This Court, in the said Judgment, has also

followed earlier Judgment of the Hon Ã¢â‚¬â„¢ble Apex Court in the case of V. D. Bhanot V/s Savita Bhanot reported in (2012) 3 SCC 183, wherein it is

observed that where an act of domestic violence is once committed, then subsequent decree of divorce will not absolved the liability of the respondent

from the offence committed or deny the benefit, to which the aggrieved person is entitled to under PWDV Act.

13. In the instant case also the allegations of domestic violence appears to be of the period when the parties were in domestic relationship. Further, in

the light of clear observations of the Hon Ã¢â‚¬â„¢ble Apex Court in the Judgments of Prabha Tyagi and V. D. Bhanot (cited supra), the main question

involved in this matter is already answered in favour of the Non-applicant/wife.

14. Thus, there cannot be any perversity in the impugned Judgments in the light of law laid down by the HonÃ¢â‚¬â„¢ble Supreme Court in the aforesaid

cases.Ã, AsÃ, such,Ã, noÃ, interferenceÃ, inÃ, theÃ, impugnedÃ, JudgmentÃ, isÃ, required.

Resultantly, the Criminal Revision Application stands dismissed.