IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.36 OF 2020

Murlidhar s/o Rambhau Bodkhe
Age, 53 years, Occ. Service & Business,
R/o Avinash Colony, Waluj,
Tq. Gangapur, Dist. Aurangabad ...Petitioner

Versus

1. Sangita w/o Murlidhar Bodkhe
Age : 38 years, Occ. : Household,

2. Sayali d/o Murlidhar Bodkhe
Age : 24 years, Occ.: Education,

3. Sarang s/o Murlidhar Bodkhe
Age : 21 years, Occ. : Education,

All R/o Plot No.X-169, Waluj Industrial Area
Chinchban Colony, In front of Colgate Company
MIDC Aurangabad.

4. Sarika Murlidhar Bodkhe (Deleted)
Age : Major, Occ. : Household,
R/o Plot No.25/1, Om Kirana & General Store,
Shivaji Nagar, MIDC Waluj,
Tq. & Dist. Aurangabad. ...Respondents

...
Advocate for Applicant : Mr. Shinde Shrikishan S.
Advocate for Respondents : Mr. Choudhary M.S.
...

CORAM : S.G. MEHARE, J.

DATED : MARCH 09, 2023

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally.

2. The petitioner/husband has preferred the revision against the judgment and order of the learned Additional Sessions Judge, Aurangabad, in PWDVA Appeal No.7 of 2018, dated 03.12.2019.

3. The dispute between husband and wife has a checkered history since 2005. The wife, first in time, had preferred the divorce petition against the husband on the ground of cruelty and desertion. Her petition was dismissed. The appeal preferred against the said Judgment was also dismissed. The said Judgment has attained the finality. Then the husband filed a petition for custody of the children. However, the Court returned his complaint for want of jurisdiction. He did not file an application in the Court having jurisdiction. Again, in the year 2006, the wife filed a petition under Section 20 of the Hindu Adoption and Maintenance Act for the maintenance of the children only. It was allowed. The husband accepted the said order and paid the maintenance to the children. Then again, the wife filed a petition for enhancement of the maintenance under the Hindu Adoption and Maintenance Act. It was allowed. The husband again accepted the said judgment and order. In the year 2015, the wife again filed a petition under Section 18 of the Hindu Adoption and Maintenance Act. It was partly allowed. That order was challenged. The District Court set aside the said order. After that, in the year 2014, she filed a proceeding under the Protection of Women from Domestic Violence Act, 2005 (short 'D.V. Act'). Appreciating the

evidence led by the respective parties, the learned Judicial Magistrate First Class dismissed her petition by its order dated 07.12.2017 in PWDVA No.296 of 2014. Dissatisfied with the dismissal order, the wife preferred an appeal. The learned Sessions Judge allowed the petition and granted the maintenance of Rs.3,000/- per month and the house rent of Rs.3,000/- per month to the respondent/wife.

4. Learned counsel for the petitioner has vehemently argued that the learned Additional Sessions Judge incorrectly applied the ratio in the case of *Hitendrakumar Vs. Nilima 2018 (2) Mah.L.J. (Cri) 622*. He would have to discuss the evidence and then record his disagreement with the reasons of the trial Court. Disagreeing with the trial Court in a single line and reasoning, is not the rule of writing Judgment under review. He referred to the reasons recorded by the learned Judicial Magistrate and argued that the order of the learned Judicial Magistrate First Class is well reasoned. He would argue that since 2005, the wife did not reside with the husband. She never complained of the commission of domestic violence when she was living in the shared household with her husband. The Civil Court has discarded the allegations of cruelty and desertion. The findings of the Civil Court are binding on the Criminal Court. Therefore, the learned Additional Sessions Judge, Aurangabad, has committed a grave error of law in setting aside the order of the learned Magistrate in a single line. Unless the aggrieved person proves the domestic violence, no

relief under the D.V. Act can be granted. The learned Additional Sessions Judge, Aurangabad, has ignored the legal preposition. The order is mechanical and without reason. Hence, it is liable to be set aside.

5. Per contra, learned counsel for the respondent/wife has argued that the husband has performed a second marriage. He never accepted the responsibility of the respondent/wife. The husband is enjoying his life with his second wife and children, and the wife is suffering alone. She was ready to cohabit with her husband, but he did not allow her. The wife has been completely deserted. She has no source of income. Therefore, the learned Additional Sessions Judge, Aurangabad, has correctly granted the maintenance though it is meagre. He relied on the case of Shomen Nikhil Danani Vs. Tania Banon Danani, Special Leave to Appeal (Crl.) No(s). 6005/2019 (Arising out of impugned final judgment and order dated 11-04-2019 in CRLRP No.994/2018 passed by the High Court of Delhi at New Delhi). In this case, (the Hon'ble Supreme Court) has observed that merely passing an order under Section 125 of the Cr.P.C. 1973 did not preclude the respondent from seeking appropriate reliefs under the D.V. Act. In this case, it was not the issue that the petition of the wife had been dismissed or entertained for the reason that she had filed a proceeding under Section 125 of Cr.P.C. Hence, this case would not assist her. As far as the case relied upon by the respondent, R.D. Vs.

B.D., before the Delhi High Court (MAT. APP. (F.C.) 149/2018) dated 31.07.2019, it was an appeal arising out of interim order passed by the Family Court under Section 24 of the Hindu Marriage Act. The issue before the Court was whether the maintenance can be awarded in other proceedings once the interim maintenance has already been granted under proceedings arising out of Section 125 of Cr.P.C. or D.V. Act. The Delhi High Court has answered the question that if any order is passed by the Family Court under Section 24 of the Hindu Marriage Act, the same will not debar the Court in the proceedings arising out of the D.V. Act or proceedings under Section 125 of Cr.P.C., instituted by the wife/aggrieved person claiming maintenance. Again, this case is on different facts and issues; hence, not helpful to the wife.

6. The learned Additional Sessions Judge, Aurangabad, in the impugned judgment and order, has observed that the learned Magistrate failed to consider the evidence, material placed on record and facts elicited on record in proper perspective. While exercising power under appeal, the appellate Court has to write a judgment as provided under Section 354 of Cr.P.C. as it applies to the judgment by the appellate Court. The judgment shall contain the point or points for determination, the decision thereon and the reasons for the decision. The appellate Court has to write a Judgment as if it is a trial before it. It has to record the reasons. Writing a Judgment in appeal is rewriting the judgment. The appellate Courts are also governed under

rules including standard of reviewing the Judgment and order of the trial Court. It has to reappreciate the evidence and assign the reason for its conclusions. The appellate Court has to assign reasons if it disagrees with the findings of the trial Court. Merely writing a single line about failing to consider the evidence, material placed on record, and the facts elicited in proper perspective is incorrect in law.

7. The learned Additional Sessions Judge did not assign any reason, disagreeing with the reasoned order passed by the learned Magistrate. It has erroneously observed without giving reasons that the Magistrate has not properly appreciated the evidence in proper perspective. Same way, the learned Additional Sessions Judge has recorded a single-line reason that there is sufficient evidence to establish the domestic violence caused to the appellant. Again, such a single-line reason is not expected from senior judges like District judges. He appears to have ignored the rules of writing judgment in appeal. On the contrary, the learned Magistrate has discussed the facts in detail. He has considered each and every piece of evidence. He has also considered the law as regards domestic violence and the entitlement of the aggrieved persons under the D.V. Act.

8. In order to seek relief under D.V. Act, the aggrieved person has to prove or prima facie show that there was domestic violence. That compelled him or her to seek relief under the said Act. Domestic violence is *sine-qua-non* for considering the application

under the D.V. Act. In this case, the wife has been residing separately since 2005 from her husband. She never claimed maintenance under either the law or by her own petition. She is getting the interim maintenance of Rs.1,000/- in the divorce petition filed by the husband. It is yet not concluded.

9. Perusal of the order passed by the learned Judicial Magistrate, this Court is of the view that it is well-reasoned order and with correct findings that the respondent/wife failed to prove the domestic violence. However, the learned Additional Sessions Judge appears to have not correctly examined the record, considered the rule of appreciating the evidence, and mechanically passed the impugned order. The impugned order is illegal, improper and incorrect, and therefore, it is liable to be set aside. Hence, the following order :

ORDER

I) The revision application is allowed.

II) The order passed by the learned Additional Sessions Judge, Aurangabad, in PWDVA Appeal No.7 of 2018 dated 03.12.2019 is quashed and set aside, and the order of the learned Judicial Magistrate First Class, Aurangabad, in PWDVA No.296 of 2014 dated 07.12.2017 is maintained.

III) Record and proceedings be returned to the learned Judicial Magistrate First Class, Aurangabad.

IV) Whatsoever amount the wife has received by way of an interim order of this Court shall not be recovered from her.

V) Rule is made absolute in the above terms.

(S.G. MEHARE, J.)

Mujaheed//