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**An Application Under Section 29 Of The Protection Of Women
From Domestic Violence act, 2005.**
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Appearance :- Advocate Shri. Shekhar Shetty for the appellant.
Advocate Shri. P. R. Shukla h/f Adv Dharmesh Joshi
for respondent No. 2.
Shri. Sachin Jadhav, Additional Public Prosecutor.

**Coram : His Honour Addl. Sessions Judge,
Ashish Ayachit
(Court Room No.13)**

Date : 8th Day of February, 2024.

JUDGMENT

This is criminal appeal under section 29 of the Protection of Women from Domestic Violence Act (referred as “ the **PWDV Act**”) against the judgment and order dated 05.11.2015 passed by the Metropolitan Magistrate, 26th court, Borivali (referred as to, “the **Learned Trial Court**”) in C.C. No. 95/N/2008.

2. The appellant is original applicant and respondent Nos.1 to 4 are respondents before the Learned Trial Court. I have referred the parties by their original nomenclature as they stood in the proceeding before the Learned Trial Court.

3. The applicant has filed C.C.No. 95/N/2008 under Section 12 of The PWDV Act for seeking various reliefs. The Learned Trial Court has dismissed the proceeding by impugned judgment and vacated

interim directions and reliefs granted during pendency of the proceeding.

4. Before considering case of the applicant, it would be apposite to note undisputed rather admitted facts gathered from the record as under:

- a) Applicant is/was wife of respondent No.1. Their marriage solemnised on 5.5.1992 as per Hindu rites and customs. Thereafter, the said marriage has been dissolved by the Family Court vide judgment dated 6.1.2014 in Petition No.A-473 of 2008. Said judgment is now sub-judice before the Hon'ble High Court in Appeal.
- b) Applicant and respondent No.1 have one daughter from the said wedlock namely Priyanka begotten on 2.7.1994 and at present she is residing with applicant/mother.
- c) Respondent Nos.2 to 4 are sisters-in-law and brother-in-law of the applicant.
- d) It is also admitted fact that applicant is working woman and having job Assistant at Mantralaya, Maharashtra.

5. In the nutshell, case of the applicant is that, respondent No.1 performed marriage with he by suppressing the mental illness of her mother-in-law and deceived her. According to the applicant, her mother-in-law was opposing her job and harassing her. Respondents were constantly harassing her. Therefore, applicant and respondent No.1 shifted to Charkop, Kandivali (West), in the month of May-1993 in their new house, where she delivered a daughter. Subsequently, the applicant is residing separate with her. According to her complaint, respondent No.1 husband and other respondents used to harass her when she resided together during 5.5.1992 to February-1993. Her

mother-in-law has psychiatric/mental problem. She was not present during engagement and marriage. The applicant alleged that when they separated, respondent No.1 used to frequently visit to his mother at Thane and other respondents at Bhandup. Respondent No.2 and her husband were demanding money to respondent No.1. Therefore, respondent No.1 used to quarrel with her. When she was pregnant, he had thrown glass pan fitted in the bathroom. On one occasion, he threw table fan on her.

6. According to the applicant, on one occasion, respondent No.1 put kerosene on his body and threatened for self- immolation . He on one occasion had cut wrist by kitchen knife under mental pressure. Thus, he attempted to commit suicide to blame her and her parents. Thus, according to the applicant, respondent No.1 has consistently threatening to commit suicide, which caused lot of mental agony and harassment to her.

7. The applicant comes with the case that, after marriage of respondent No.3 i.e. younger brother of respondent No.1, respondent No.1 went abroad during September-1993 to December-2004 for employment. Whenever respondent No.1 used to return to Indian on leave, he used to visit his mother and send Rs.10,000/- every year to his mother during the course of employment. He spent amount over eye operation of his mother. According to the applicant, in December-2004, respondent No.1 returned back to India permanently and worked at Dehradun. Thereafter he changed his job at Boisar, Palghar, Wadala, Vapi and lastly got job at Goregaon. Respondent No.1 during his stay at Mumbai, used to go to his mother and other respondent's house every

Saturday-Sunday, public holidays. He used to quarrel with her on every trivial and truffle issues. He used to shout over daughter. Thus, it was causing mental pain and agony to her. Respondent Nos.2 to 4 used to instigate respondent No.1 and poisoned his mind. Therefore, he used to quarrel with applicant and assaulted her. According to applicant, on 26.8.2007, respondent No.1 had quarrelled with her and she lodged report with police station vide NC No.2476/2007 of the offence punishable under Sections 323, 504, 506 of IPC. The police made conciliation. Thereafter again respondent No.1 made complaint against applicant on 8.9.2007 in Social Service Branch, Mumbai. There was again mediation between them. Thereafter, applicant received legal notice on 18.9.2007 from respondent No.1 demanding divorce which she replied on 8.10.2007. Thereafter on 2.11.2007, respondent No.1 again picked up quarrel with her and left marital home and sent notice through advocate on 3.11.2007. On 19.1.2008, the applicant tried to persuade him to join marital home, but he threatened to commit suicide and put blame on her. Therefore, she is constrained to file present application for seeking various reliefs i.e. under Section 18 and 19 of the PWDV Act for protection order, under Section 20 for monetary relief and under Section 21 for custody and compensation.

8. The respondents appeared and filed their separate reply vide Exh.3, 5, 8 and 9. They denied entire adverse allegations against them. According to respondent No.1, due to unusual behaviour of applicant, their daughter suffered with mental agony. Applicant has never accepted him as husband and used to level false allegations. She lodged various false reports against him on 26.8.2007, 8.9.2007.

According to him due to the cruelties of the applicant, he has filed divorce petition before the Family Court. He narrated cruelties, ill-treatment and misbehaviour of applicant with him in his reply. According to him, applicant made his life miserable. Applicant is a greedy woman. She has withdrawn amount of Rs.21.68 lacs from his NRE account without any information and purchased a flat from the same amount. Applicant always instigated him to commit suicide. Thus, finally he filed petition for divorce. Therefore, he stated that there is no cause of action to file present application. Hence, he requested to dismiss the same.

9. Respondent Nos.2 to 4 have also alleged that there is no cause of action against them. They never interfered into the marital life of applicant and respondent No.1 and they have no concern with the dispute. Hence, they requested to dismiss the petition against them.

10. The learned Trial Court, after recording of evidence of applicant (PW-1), her mother Vidya Vinayak Naik(PW-2) and evidence of respondent No.1(DW-1) decided the proceeding and dismissed the same by impugned judgment.

11. The applicant being aggrieved and discontented with the said order filed this appeal upon various grounds mentioned in the appeal memo.

12. I have heard Learned Advocate Shri. Shekhar Shetty for the appellant and Advocate Shri. P. R. Shukla h/f Adv Dharmesh Joshi for respondent No. 2.

13. The following points emerges for my determination and I am recording by findings thereon as under:

Sr.No.	Points	Findings
1.	Whether the applicant proves that she is subjected with domestic violence by the hands of respondents ?	No.
2.	Whether the applicant proves that she is entitled for relief under the PWDV Act ?	No.
3.	Whether the interference is required by the hands of this court in the impugned judgment of the Trial Court ?	No.
4.	What order ?	The appeal is dismissed as per final order.

REASONS

AS TO POINT NO.1:-

14. Learned Advocate for the applicant has restricted his prayer for protection order against respondents and maintenance to the daughter till her marriage. He has relied upon the judgment of the Hon'ble Apex Court in case of **Abhilasha V/s Parkash & Ors in Criminal Appeal No.615 of 2020(Arising out of SLP (Crl.) No.8260/2018) dated 15.9.2020** and the judgment of the Hon'ble Delhi High Court in case of **Chandhok (Lajwanti) V/s Chandhok (O.N.) reported in ILR 1982 Delhi 689**. He therefore requested to set aside the judgment of the learned Trial Court.

15. Respondent No.1 is absent. Advocate for respondent No.2

submitted that he has already filed written notes of arguments.

16. I have perused the record. The appeal is of 2016. Considering the submission of appellant, I have decided it on merit.

17. It is necessary to mention that it is a summary inquiry under the PWDV Act to provide immediate relief to the aggrieved woman, who is in need and subjected to domestic violence. Thus, it is incumbent upon the applicant to prove that she is subjected to domestic violence.

18. Applicant adduced her evidence by way of affidavit of examination in chief (Exh.21) running into 37 pages. There are vague and ambiguous allegations against the respondents. However, her cross-examination she has admitted that she has not mentioned details or particulars of the incidents taken place during 1992 to 2007. It is matter of record that applicant is an 'Assistant' working in Mantralaya and getting salary. It revealed from the entire evidence that her grievance is that, respondent No.1, husband is giving time and money to his mother, which cannot be considered as domestic violence. She made allegations that respondent No.1 when working abroad during 1996-2004, he used to send money to his mother. However, it is clearly revealed from her cross-examination that she had withdrawn amount from NRE account of respondent No.1 and purchased a flat in her name. It reveals from her pleadings as well as evidence that, after marriage on 05.05.1992, in the month of May-1993, they shifted to separate house. Thus, since applicant and respondents resided together only from period May-1992 to May-1993. The applicant made very vague allegations which does not inspire confidence of truthfulness. On

the contrary, the pleadings and evidence and admissions given in the cross-examination, lead to conclusion that respondent No.1, husband tried to commit suicide on 2-3 occasions. It is matter of record that their marriage has been dissolved under Section 13(1)(ia) of Hindu Marriage Act on the reason of cruelty by wife. Thus, the entire evidence of applicant is unbelievable and untrustworthy.

19. Another evidence of mother of applicant in affidavit form cannot be considered as she is interested in the applicant. There is nothing to prove that respondent No.1 or respondent Nos.2 to 4 have subjected domestic violence to applicant. On the contrary, I have no hesitation to hold that this proceeding has been initiated only after issuance of notice by respondent No.1 for demanding divorce. It is pleading of applicant herself that, during 1997 to 2004, respondent No.1 was abroad. Thus, the allegations that he was not providing any financial help to applicant, cannot be accepted as she herself admitted that she withdrew amount from the account of respondent No.1.

20. Respondent No.1 also filed affidavit of examination in chief (Exh.61) and other documents including copy of judgment of the Family Court, reports. Careful reading of entire evidence of applicant and respondent No.1, I am of considered opinion that applicant has miserably failed to prove that she was subjected with domestic violence.

21. So far as the judgments cited by Learned Advocate for the applicant/appellant are concerned, those are not much helpful to the applicant in the given facts and circumstances of the present case. Therefore, I answer point No.1 in the negative.

AS TO POINT NO.2:-

22. In view of the aforesaid findings, applicant is not entitled for any relief under the PWDV Act. During the pendency of this proceeding, Learned Trial Court granted interim maintenance of Rs.3,000/-, which is vacated by impugned judgment. I do not think that applicant in any way in need of any relief available under PWDV Act. So far as arguments of learned Advocate for applicant that daughter is unmarried, and therefore maintenance may be awarded to the daughter can not be accepted. Admittedly, daughter borne on 2.7.1994. So she is major. In such circumstances, I do not think that applicant is entitled to recover maintenance for major daughter. Major daughter has independent remedy available as per provisions of law. Therefore, the applicant is not entitled for maintenance for major daughter. Hence, I answer point No.2 in the negative.

AS TO POINT NO.3:-

23. In view of aforesaid finding, I do not find any infirmity, illegality in the order of Learned Trial Court. On the contrary, I would say that, Learned Trial Court has appreciated entire facts and evidence detail as per provisions of law. Hence, the impugned judgment of the Learned Trial Court does not require interference by the hands of this court. Accordingly, I answer point No.3 in the negative.

AS TO POINT NO.4:-

24. In view of the aforesaid findings, this appeal is liable to be dismissed. Therefore, I answer point No.4 accordingly and pass the following order :

ORDER

1. Criminal Appeal is dismissed.
2. Parties to bear their own costs.
3. Copy of this judgment be supplied to the appellant and respondent free of costs.
4. Record and proceeding be sent to the Trial Court.

Date: 13.02.2024

(Ashish Ayachit)
Additional Sessions Judge,
City Civil & Sessions Court,
Borivali Division, Dindoshi

Dictated by HHJ on : 13.02.2024
Transcribed on : 13.02.2024
Signed on : 13.02.2024

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”	
Date : 13.2.2024 Time : 5.45 P.M. UPLOAD DATE AND TIME	Mrs. S.A.Kapare (Stenographer Grade-I) NAME OF STENOGRAPHER
Name of the Judge (with Court Room No.)	HHJ Shri Ashish Ayachit (Court Room No.13)
Date of Pronouncement of Jud/Order	13.2.2024
Judgment/Order signed by P.O. on	13.2.2024
Judgment/Order uploaded on	13.2.2024