

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

**CRIMINAL REVISION APPLICATION (REVN) NO. 64 OF 2015**

Smt. Sapna wd/o Nilesh Patel,  
aged about 38 years, Occupation  
Household, R/o C/o Shri Marliwar,  
Dhanora Road, Gadchiroli, Tq. and  
District Gadchiroli.

... APPLICANT

**VERSUS**

1. Shri Pravin Ishwarbhai Patel,  
aged about 51 years, Occupation  
Business, R/o Sarvodaya Ward,  
Gadchiroli, Tq. and District  
Gadchiroli.

2. Shri Nitin Ishwarbhai Patel,  
aged about 48 years, Occupation  
Business, R/o Phule Ward, Gadchiroli,  
Tq. and District Gadchiroli.

3. Shri Dilip Shantubhai Patel,  
aged about 47 years, Occupation  
Business, R/o Kannamwar Nagar,  
Gadchiroli, Tq. and District Gadchiroli.

... RESPONDENTS

....

Shri V.N. Morande, Advocate for the applicant.  
Shri S.V. Sirpurkar, Advocate for respondent Nos.1 and 2.  
None for respondent No.3.

....

**CORAM : M.G. GIRATKAR, J.**

**DATE OF RESERVING THE JUDGMENT : 15TH APRIL, 2019.**

**DATE OF PRONOUNCING THE JUDGMENT : 03RD MAY, 2019.**

JUDGMENT :

The present revision is against the common judgment dated 18<sup>th</sup> April, 2015 passed by the learned Additional Sessions Judge, Gadchiroli in Criminal Appeal Nos.45 of 2014 and 48 of 2014.

2. The case of the applicant/Sapna wd/o Nilesh Patel in short is that deceased Ishwarbhai Patel and Shantubhai Patel were the real brothers forming joint family. Shantubhai died in the year 1975. Shantubhai had two sons namely Nilesh and Dilip. Applicant Sapna is the widow of Nilesh who died on 27.03.2010. Ishwarbhai Patel had two sons namely Pravin and Nitin. After the death of Shantubhai, his sons Nilesh and Dilip were looked after by Ishwarbhai. They were forming a joint family. There was joint family business of the applicant. Deceased Nilesh, husband of applicant was looking after the business of Patel Mangal Karyalaya. After the death of husband of applicant/Sapna, it is taken over by respondent No.1/Pravin Patel. Thus, she had no source of income. Therefore, application under Section 12 of the Protection of Women From Domestic Violence Act

(hereinafter referred as DV Act) was filed by the applicant/Sapna. It was registered as PWDV Case No. 03 of 2014.

3. Learned Judicial Magistrate, First Class, Gadchiroli has recorded the evidence of both the parties and partly allowed the petition. The respondents were directed to restore the possession of Patel Mangar Karyalaya, Gadchiroli to the applicant/Sapna Patel within a period of one month from the date of the order dated 16<sup>th</sup> October, 2014. Her claim for monthly maintenance of Rs.30,000/- came to be rejected. Non-applicant No.1 Pravin Patel filed Criminal Appeal No. 45 of 2014 challenging the restoration of possession of Patel Mangal Karyalaya to the applicant/Sapna. Applicant/Sapna challenged the decision of JMFC in Criminal Appeal No. 48 of 2014 challenging the refusal of grant of maintenance of Rs.30,000/- per month.

4. Heard Shri V.N. Morande, learned Counsel appearing on behalf of the applicant and Shri S.V. Sirpurkar, learned Counsel appearing on behalf of respondent Nos.1 and 2.

5. Shri Morande, learned Counsel for the applicant has



submitted that Patel Mangal Karyalaya was looked after by the husband of applicant/Sapna namely Nilesh Patel. It was the only source of income of Nilesh Patel and his family. There is no dispute that it is joint family property. After the death of Nilesh Patel in the year 2010, respondent No.1 took over the possession of Patel Mangal Karyalaya. The applicant is not having any source of income. He has pointed out material admission of respondent No.1/Pravin Patel and submitted that he has given specific admission that after the death of Nilesh, there was meeting of relatives. In the said meeting, till the partition of joint family property, he agreed to maintain the family of Nilesh. He has further admitted that son of the applicant is not earning. He is aged about 18 years. Learned Counsel has further submitted that some part of Patel Mangal Karyalaya is in the possession of respondents Nitin and Dilip. Shri Morande, learned Counsel has also submitted that the learned JMFC has rightly granted relief of restoration of possession of Patel Mangal Karyalaya. Therefore, prayed to allow the revision.

6. Shri Sirpurkar, learned Counsel for respondent Nos.1 and 2 has submitted that Patel Mangal Karyalaya was constructed by

respondent No.1/Pravin. It was his own property and, therefore, it could not be restored to the applicant/Sapna. Learned Counsel has further submitted that there was no domestic relationship when the application was filed. He has also submitted that the entire family of deceased Nilesh and others are residing separately. Therefore, there is no domestic relationship. At last, he has submitted that the learned Additional Sessions Judge has rightly decided both the appeals.

7. There is no dispute that there was joint family and it is having joint family property. The applicant examined herself and other witnesses. Her evidence shows that her husband was looking after Patel Mangal Karyalaya during his lifetime and it was their only source of income. Her husband died in the year 2010. Her father-in-law and father of respondent Nos.1 and 2 were having joint family property. They purchased land at Gadchiroli and constructed Patel Mangal Karyalaya out of the income of joint family property. Evidence on record shows that respondent Nos.1 to 3 along with Nilesh were residing jointly. Husband of applicant died on 27<sup>th</sup> March, 2010 leaving behind the applicant and a son. Respondent No.1 being the eldest son, started his business and due to some difference in the

family, left the joint family in the year 1999 and settled himself in the business by obtaining licence to manufacture explosives, mining lease, quarrying lease etc. with the help of earning from the joint family property.

8. Patel Mangal Karyalaya was built on the land purchased jointly by Ishwarbhai and Shantubhai. Husband of applicant got separated from the joint family due to the differences with Ishwarbhai and started looking after the business of marriage hall/Patel Mangal Karyalaya. After the death of Nilesh, husband of applicant, respondent No.1/Pravin took over Patel Mangal Karyalaya. There is no dispute that all the joint family properties are in the possession of respondent Nos.1 to 3. There is no dispute that the applicant is not having any business.

9. It is contended by respondent No.1 that the applicant is doing beauty parlour business, but nothing is on record to substantiate his claim. Admission of respondent No.1 clearly shows that the son of applicant is not having any business. He is aged about 18 years. Cross-examination of respondent No.1 is very material. He has admitted in

his cross-examination that after the death of Nilesh, there were meetings and also meetings when Nilesh started residing separately during the lifetime of Ishwarbhai. He has further admitted that till date, they have not partitioned their joint family properties. He has further admitted that they have joint family property including agricultural lands, houses and Patel Mangal Karyalaya. There are some joint family properties in Gujarat. He has further admitted that the property at Gadchiroli was purchased after Ambalal Patel, Grandfather came to Gadchiroli. He has also admitted that after the death of Nilesh, there was meeting of relatives and he had agreed to maintain the family of Nilesh till the partition of joint family property. This particular admission clearly shows that Patel Mangal Karyalaya is the joint family property of applicant and respondents. Respondent No.1/ Pravin agreed to maintain the family of Nilesh i.e. applicant and her son. Guarantee was taken by respondent No.1 may be because he took over the Patel Mangal Karyalaya in his possession, otherwise, there was no reason for him to take such a decision.

10. Though respondent No.1/Pravin has stated that Patel Mangal Karyalaya was his own property, specific admission in the

cross-examination clearly shows that Patel Mangal Karyalaya is the joint family property. As per the evidence adduced by the applicant and her witnesses, Patel Mangal Karyalaya was looked after by the husband of the applicant till his death. It was the only source of income of the applicant which she is deprived of the income of Patel Mangal Karyalaya. It is an economic abuse as defined under Section 3 sub Clause (iv) of the DV Act and, therefore, it is a domestic violence as defined under Section 3 of the said Act.

11. Shri Sirpurkar, learned Counsel for respondent Nos.1 and 2 has submitted that she is residing separately and, therefore, there is no domestic relationship. In support of his submission, he has placed heavy reliance on the judgment of this Court in the case of *Rekha Balasaheb Patil .v. Smt. Durgawati Shridhar Patil and others (reported in 2019 All MR (Cri), 511)*. In the cited decision, daughter-in-law claimed right in shared household property. But, it was the exclusive property of her mother-in-law. It was separate property of her mother-in-law and, therefore, it cannot be treated as shared house. In the present case, Patel Mangal Karyalaya is the joint family property and it was the only source of income of the applicant. Therefore, cited



decision is not applicable to the case at hand.

12. Shri Sirpurkar, learned Counsel has submitted that the applicant is not residing with the respondents and, therefore, there is no domestic relationship. In support of his submission, he has pointed out the decision of Delhi High Court in the case of *Vijay Verma .v. State NCT of Delhi and another (reported in 2010 (118)(DRJ, 520)*. The facts in the cited case are very much different. The wife was not living in the house immediately before filing of the application rather settled in USA after leaving her parents. She has claimed her share in the property of her parents. Therefore, it cannot be a domestic violence. Hence, the cited decision is not applicable to the case in hand. Learned Counsel has pointed out the decision of the judgment of Punjab and Haryana High Court in the case of *Om Prakash Syngal and others .v. Shimla Garg (reported in 2016 All MR (Cri) Journal, 414)* and submitted that the parties are not residing together. Therefore, there is no domestic violence. It was held by Punjab and Haryana High Court that, “once a family member leaves shared household and establishes his/her own household, domestic relationship comes to an end”. In the present case, though they are

living separate in mess, property is joint property and moreover, the Patel Mangal Karyalaya was in possession of the husband of applicant and she is deprived of the source of income from Patel Mangal Karyalaya. Therefore, cited decision is not applicable to the case in hand.

13. Shri Sirpurkar, learned Counsel for the respondents pointed out the decision in the case of *Hima Chugh .v. Pritam Ashok Sadaphule and others (reported in 2013 Cri. L.J., 2182)*. It is observed that the petitioner returned to India temporarily. A protection order can be obtained only against her husband who is in domestic relationship with the aggrieved person and not against in-laws. The facts in the cited case are very much different. In the case of *Harbans Lal Malik .v. Payal Malik (reported in 2010 (118) DRJ, 582)*, it is observed that, “aggrieved persons and domestic relationship mean there can be no domestic relationship of the wife of son with the parents when the parents are not living along with the son and there can be no domestic relationship of a wife with the parents of her husband when son along with the wife is living abroad, maintaining a family there and children are born abroad.”

14. In the present case, the applicant and the respondents were residing jointly and till date their joint family property is not partitioned as per the admission of respondent No.1 himself and, therefore, cited decision is not applicable to the present case.

15. Domestic Relationship is defined in Section 2(f) as under :-

““Domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.”

The applicant had lived together with respondent No.1 as family members in a joint family. Therefore, there is a domestic relationship between the applicant and the respondents. Domestic Violence is defined under Section 3 of the DV Act, as under :-

**“3. Definition of domestic violence** – For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it -

- (a) ...
- (b) ...
- (c) ...
- (d) ...

*Explanation I.* - For the purposes of this section, -

- (i) “physical abuse”
- (ii) “sexual abuse”
- (iii) “verbal and emotional abuse”
- (iv) “economic abuse” includes -

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, *stridhan*, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance.

- (b) ...
- (c) ...”

16. As per clause (iv)(a), deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom ... is an economic abuse.

17. In the present case, the applicant was having only source of income from Patel Mangal Karyalaya during the lifetime of her husband. After the death of her husband, respondent No.1 took over

the possession of said Patel Mangal Karyalaya and deprived the applicant from financial resources from Patel Mangal Karyalaya. Therefore, it amounts to economic abuse.

18. In the judgment of this Court in the case of *Mr. Dajvip V. Patkar .v. Mrs. Vina D. Patkar (eported in 2016 All MR (Cri) 1475)*, it is held that, “the applications under the provisions of DV Act are in addition and not in derogation of any other law for time being in force. Notwithstanding pendency of similar applications before Civil Court, respondent wife cannot be precluded from taking recourse to remedy provided under DV Act. Principles akin to Section 10 of the Code of Civil Procedure, not attracted. Section 26(3) of the Act takes adequate care to avoid possibility of conflicting decisions/orders.” The claim of the applicant cannot be thrown out only because she had remedy to seek partition.

19. “Economic abuse” against the applicant is a continuous abuse. In the judgment of Orissa High Court in the case of *Gangadhar Pradhan .v. Rashmibala Pradhan (reported in 2013 All MR (Cri) Journal, 145)*, it is held that, “till the date of filing of petition,

petitioner was not granted any of the reliefs she sought therein. Therefore, petitioner having continuous cause of action i.e. continuous act of deprivation of her right. Petition under Section 12 is maintainable.”

20. In the judgment of Apex Court in the case of *Shalini .v. Kishor and others (reported in 2015 (6) SCALE, 219)*, it is held that, “past relation is a domestic relationship.” In the judgment of this Court in the case of *Dhananjay Ramkrishna Gaikwad and others .v. Sunanda Dhananjay Gaikwad and others (reported in 2016 All MR (Cri), 2291)*, it is held that, “Aggrieved Person', as laid down in Section 2(a) clearly provided that any women, who is or has been in domestic relationship with the respondent. The definition of 'Domestic Relationship' also means relationship between two persons, who live or have, at any point of time, lived together in shared household.” In the present case, the applicant lived in a shared household along with respondents. Therefore, she is “aggrieved person”.

21. In the judgment of Apex Court in the case of *Juveria Abdul Majid Patni .v. Atif Iqbal Mansoori and another (reported in*

2015(2) Mh.L.J. (Cri), 509, the Hon'ble Apex Court has held that, “domestic violence apart from “physical abuse” and “sexual abuse”, “verbal and emotional abuse” and “economic abuse” also constitute “domestic violence.” In the present case, the applicant is suffering from economic abuse at the hands of respondent No.1.

22. Respondent No.1 has specifically admitted that the Patel Mangal Karyalaya is a joint family property. He is having various businesses. After the death of husband of applicant, respondent No.1 took over the possession of Patel Mangal Karyalaya and deprived the applicant from the source of income. Respondent No.1 has admitted in his cross-examination that after the death of Nilesh, husband of applicant, he had agreed in the meeting to maintain the family members of deceased Nilesh i.e. applicant and her son. Evidence on record shows that her son is not doing any business. The applicant is not having any source of income. She is suffering from economic abuse. Learned JMFC taken into account all the evidence and rightly granted relief of restoration of possession of Patel Mangal Karyalaya to applicant/Sapna. Once the restoration of Patel Mangal Karyalaya is granted, there is no need to grant maintenance of Rs.30,000/- per

month to the applicant. The judgment of learned JMFC is perfectly legal and correct.

23. In view of the aforesaid facts, revision is partly allowed. Judgment dated 18<sup>th</sup> April, 2015 passed by the learned Additional Sessions Judge, Gadchiroli in Criminal Appeal Nos.45 of 2014 and 48 of 2014 is quashed and set aside. The judgment of learned Judicial Magistrate, First Class., Gadchiroli dated 16<sup>th</sup> October, 2014 in PWDV Case No. 03 of 2014 is hereby restored.

R and P be sent back to the learned trial Court.

JUDGE

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