

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

**CRIMINAL WRIT PETITION No. 826/2018.**

Sau. Shilabai Hiraji Lonare,  
Age 51 years, Occupation – Household,  
resident of Virshi Ward, Heti Bangla,  
Desaiganj, Tahsil Desaiganj,  
District Gadchiroli. ... **PETITIONER.**

**VERSUS**

1. Hiraji Sitru Lonare,  
Aged 59n years, Occupation – Retired Person.
2. Sau. Lata Hiraji Lonare,  
Aged 48 years, Occupation – Household,

Both residents of Bramhapuri,  
Tahsil Bramhapuri, District Chandrapur. ... **RESPONDENTS.**

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Mr. A.A. Dhawas, Advocate for the Petitioner.  
Mr. A.S. Bhendarkar, Advocate for Respondents.  
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**CORAM : VINAY JOSHI, JJ.**

**DATE : MARCH 11, 2020.**

**ORAL JUDGMENT :**

**Rule.** Rule made returnable forthwith. By consent of  
learned counsel appearing for the respective parties, Writ Petition is

taken up for final disposal.

2. The petitioner – wife has called in question the legality and correctness of the judgment and order passed in Criminal Appeal No. 19/2017 on 08.06.2018, whereby the order of maintenance passed in Criminal Case No. 39/2012, has been set aside.

3. The petitioner – wife has filed an application before the Magistrate in terms of Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter called as “the D.V. Act” for short), claiming various reliefs under Sections 18, 19, 20, 21 and 22 of the D.V. Act. It was the case of petitioner – wife (aggrieved person), that she got married with respondent no.1 on 04.06.1982. She was subjected to mental and physical harassment which amounts to domestic violence in terms of Section 3 of the D.V. Act. She had lodged report about the harassment in the year 1991-92 against the respondent. The learned Magistrate after recording evidence was pleased to hold that there has been domestic violence, and accordingly vide order dated 31.03.2017, granted maintenance @ Rs.2000/- per month. Additionally an amount of Rs.50,000/- was granted towards compensation and Rs.10,000/- towards medical

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expenses. Besides that some other directions were issued that respondent no.1 shall not drive the petitioner from the house, and he shall not enter into her shared household.

4. Being aggrieved by the said order, respondent no.1 preferred Appeal in terms of Section 29 of the D.V. Act. Having regard to the facts and circumstances of the case, the learned Sessions Judge, held that the aggrieved person failed to establish domestic violence and consequently set aside the order of maintenance, compensation and related directions.

5. The petitioner / wife [aggrieved person] contended that the Sessions Judge erred in holding that there was no domestic violence. The learned Counsel for the petitioner submitted that though the act of alleged violence were preceding to the enforcement of the D.V. Act, however, past instances can be taken into account. Precisely, he would submit that retrospective effect can be given to the provisions of D.V. Act. In this regard, he relied on the decision of Rajasthan High Court in case of **Smt. Sabana @ Chand Bai and another .vrs. Mohd. Talib Ali and another (Criminal Revision Petition No. 362/2011 dated 30.03.2013)**, wherein it is ruled that the

provisions of D.V. Act can apply even if the aggrieved person [wife] was divorced by the respondent prior to coming into force of the D.V. Act.

On the same line, he has relied on a decision of this Court in case of **Bharti Naik .vrs. Ravi Ramnath Halarankar and another (2010 Law Suit Bom) 1851**). In said case, it is expressed that even a divorcee wife can invoke the provisions of the D.V. Act, because the term “aggrieved person” means a women who is or has been in the domestic relationship with the respondent. There can be no dispute about said proposition of law. However, in the facts and circumstances of this case it is to be seen whether the aggrieved person has established the domestic violence so as to grant relief in terms of various provisions of the Act.

6. Admittedly, the petitioner wife got married with respondent no.1 on 04.06.1982. The couple had three issues from wedlock. There was matrimonial dispute in between the couple for which the petitioner had lodged some reports with the police in the year 1991-92. It is not in dispute that from the year 1992 onwards, the petitioner – wife was residing separately with her children at

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village Heti. The petitioner would submit that though she was residing separately, however, she was neglected and refused to maintain by respondent. The report of Protection Officer discloses that in the year 2009, when the petitioner went to the house of respondent no.1 seeking monetary help for marriage of her daughter, she was driven away. The second incidence was quoted of the year 2012 when similarly petitioner went to respondent no.1 seeking monetary help, but, she met with same treatment. Picking up these two instances, the petitioner has filed an application claiming it to be domestic violence.

7. So far as the domestic relationship between the couple is concern, there is no dispute at all. Admittedly, they were married in the year 1982, and the marriage is still subsisting. Moreover, since the couple lived together, may be prior to the enforcement of the Act, it can be said that the petitioner was an aggrieved person, if the other conditions are complied with.

8. The bone of contention is about establishing the act of domestic violence within the meaning of Section 3 of the Act, so as to claim the reliefs under the Act. The learned counsel for the

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petitioner would submit that since the respondent has not provided monetary help, it amounts to economical abuse within the meaning of sub-clause (iv) of Explanation 1 of Section 3 of the D.V. Act. Moreover, it is submitted that as the respondent had performed second marriage, it amounts to “sexual abuse” within the meaning of sub-clause (ii) of Explanation 1 of Section 3 of the D.V. Act.

9. According to the petitioner, prior to the year 1992, the respondent has harassed her but, alleged cause of action occasioned in the year 2009 and 2012 when the respondent husband refused to provide financial aid for the purpose of marriage. To counter this submission, respondent has submitted that the petitioner is living in the house owned by the respondent. The learned counsel for the respondent has pointed out certain admissions to show that at the time of marriage of their daughter in the year 2009, the respondent has provided financial aid of Rs.50,000/- to the petitioner. Moreover, it is brought to the notice from the evidence that the petitioner is serving as Anganwadi Sevika, and was earning Rs. 2000/- per month. The learned counsel for respondent vehemently argued that already the petitioner has resorted remedy of

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maintenance in terms of Section 125 of the Code of Criminal Procedure, and accordingly the order of maintenance was passed in the year 1992 itself. It is undisputed that though the maintenance order was passed, the petitioner has not filed any recovery proceeding in terms of Section 127 of the Code till date. Undisputedly, the maintenance order was not set aside by any Court meaning thereby the petitioner can recover the maintenance in terms of Section 127 of the Criminal Procedure Code. Therefore, it is apparent that the petitioner was not in financial need for her maintenance, nor she claimed amount towards maintenance.

10. In order to grant relief under the D.V. Act, it is pre-requisite to establish the domestic violence within the meaning of Section 3 of the D.V. Act. The petitioner besides isolated instances of refusal to give financial aid for children's marriage in the year 2009 and 2012, said nothing against the respondent. Moreover, the rest allegations relates way back to the year 1992. The petitioner has not explained as to what happened during the period from 1992 to 2012. In order to constitute cause of action, the act of domestic violence shall be continuous. Merely on the basis of one isolated

incident, it is difficult to hold that there has been domestic violence. The petitioner has not established that she has continuous cause of action from the year 1992, till the enforcement of the D.V. Act.

11. It reveals that the petitioner was not in financial need, which is obvious from her own action that despite having maintenance order in her favour the same was not executed. Pertinent to note that the respondent never visited the petitioner's house at any time. Even if the allegations are held to be true, respondents act is only to refuse to pay for marriage of his son. As noted above, for the marriage of the daughter, he has provided financial help, which is evidence from record. Therefore, the isolated incident of the year 2012 cannot be termed as a domestic violence. The learned Sessions Judge has appreciated the entire evidence in proper manner. Therefore, the impugned judgment calls for no interference, hence, Criminal Writ Petition being devoid of merit stands dismissed. Rule discharged. No costs.

**JUDGE**

Rgd.