

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

CRIMINAL WRIT PETITION NO.1014 OF 2017

Anita w/o Anand Tambe,
Aged about 58 years,
Occupation – Nil,
R/o C/o. Shri V.M. Gadekar,
30, Pawanbhumi Somalwada,
Wardha Road, Nagpur.

.... **PETITIONER**

VERSUS

Shri Anand s/o Eknath Tambe,
Aged about 69 years,
Occupation – Agriculturist,
R/o Hindustan Colony, Wardha
Road, Nagpur – 440025.

.... **RESPONDENT**

Shri P.A. Masram, Counsel for the petitioner,
Shri N.G. Moharir, Counsel for the respondent.

CORAM : ROHIT B. DEO, J.
DATED : 28th FEBRUARY, 2018.

JUDGMENT :

Heard Shri P.A. Masram, learned Counsel for the
petitioner and Shri N.G. Moharir, learned Counsel for the respondent.

2. **Rule.** Rule made returnable forthwith by consent of the parties.

3. The petitioner is assailing the order dated 18-11-2016 rendered by the learned 25th Judicial Magistrate First Class (Special Court PWDV Act), Nagpur in Misc. Criminal Case 2150/2014 and the judgment and order dated 24-7-2017 rendered by the learned Principal District and Sessions Judge, Nagpur in Criminal Appeal 2/2017, by and under which the order of the learned Magistrate dismissing the application under Section 12 of the Protection of Women from Domestic Violence Act, (“DV Act” for short), is upheld.

4. The petitioner preferred an application under Section 12 of the DV Act in July 2014, the prayer clause of which reads thus :

“(i) Pass a protection order in favour of applicant prohibiting and restraining the non-applicant from committing any act of domestic violence and from causing physical and mental harassment and abuse to the applicant.

(ii) Pass an order directing the non-applicant to allow to occupy his flat in 'Nirman Classic' apartment which is situated at Gajanan Nagar, Nagpur or from arranging a suitable accommodation for the applicant in Nagpur in the area where her brother stays and make the arrangements of the same status and style as the non-applicant enjoys in the matrimonial home i.e. payment of electricity bill, expenses

for other necessary requirements for the day to day use and also for the daily provisions.

(iii) Pass an order by allowing Rs.25,000/- for the subsistence of applicant.

(iv) Pass an order for payment of damages amounting to Rs.10,00,000/- towards mental agony, emotional blackmailing and economical harassment because of ill behaviour, treatment of non-applicants.

(v) Pass an order for payment of litigation expenses of Rs.50,000/- as the applicant is not earning and residing on the mercy of her parents.

(vi) Pass an order prohibiting and restraining the non-applicant from aiding or abetting in the commission of the acts of domestic violence either through themselves, or his agents, representatives etc.

(vii) Grant any other relief which this Hon'ble Court deems fit and proper in the aforesaid facts and circumstances and also in the interest of justice.”

5. The petitioner contended that her marriage with the respondent Mr. Anand Tambe was solemnized on 28-8-1979 at Nagpur and was dissolved by the judgment and order dated 09-1-1987 rendered by the learned 3rd Additional District Judge in H.M.P. 201/1981.

6. The petitioner further contended that she is living at the

mercy of her aged brother and is totally dependent on him for food and shelter. The petitioner then avers that the respondent is an agriculturist by avocation and is extremely well to do. The respondent owns agricultural land worth crores and a residential apartment at Gajanan Nagar, Nagpur and his monthly income is Rs.75,000/-, is the averment in the petition.

The petitioner then contends that she is legally entitled to claim maintenance under Section 12 of the DV Act since she is facing financial hardship and is finding it difficult to live with dignity. Significantly, the edifice of the application under Section 12 of the DV Act is entirely constructed on the averment that since the petitioner is facing destitution and the respondent is well to do, the petitioner is entitled to relief under the provisions of the DV Act. The application is absolutely silent on the extent or nature of the domestic violence to which the petitioner is subjected nor is an attempt made to explain the seeking of relief twenty-seven years after the dissolution of marriage. Be it noted, that there is absolutely no averment in the application that there was any interaction between the petitioner and the respondent post the dissolution of marriage, muchless a domestic relationship.

7. The respondent appeared before the learned Magistrate

and preferred an application (Exhibit 11) seeking dismissal of the petition, contending *inter alia* that the petitioner and the respondent were residing separately since 1981 although marriage was dissolved on 09-1-1987, that there is no domestic relationship between the petitioner and the respondent within the period of thirty-three years nor did the petitioner approach any forum in the said period of thirty-three years alleging domestic violence. The learned Magistrate was pleased to allow the application and was pleased to dismiss the petition under Section 12 of the DV Act. The dismissal order was challenged in appeal before the learned Principal District and Sessions Judge, Nagpur who upheld the order of dismissal.

8. The learned Counsel Shri P.A. Masram would submit that both the Courts fell in serious error in holding that the application under Section 12 of the DV Act was not maintainable. Reliance is placed on the judgment of the Hon'ble Apex Court in **V.D. Bhanot v. Savita Bhanot** reported in **AIR 2012 SC 965**, and in particular on the observations in paragraph 8 which read thus :

“8. The attitude displayed by the Petitioner has once again thrown open the decision of the High Court for consideration. We agree with the view expressed by the High

Court that in looking into a complaint under Section 12 of the PWD Act, 2005, the conduct of the parties even prior to the coming to force of the PWD Act, could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005.

9. The issue which fell for consideration before the Hon'ble Apex Court in ***V.D. Bhanot v. Savita Bhanot*** was whether the conduct of the parties prior to the coming into force the DV Act could be taken into consideration while passing an order under Sections 18, 19 and 20 of the DV Act. In ***V.D. Bhanot v. Savita Bhanot***, the marriage was subsisting and was not dissolved when the wife took recourse to Section 12 of the DV Act. The ratio of ***V.D. Bhanot v. Savita Bhanot*** is of no assistance to the petitioner.

In ***Inderjit Singh Grewal vs. State of Punjab & Anr.*** reported in ***2011(9) Scale 295***, the Hon'ble Apex Court observes thus :

“22. In the facts and circumstances of the case, the submission made on behalf of respondent no.2 that the judgment and decree of a Civil Court granting divorce is null and void and they continued to be the husband and wife, cannot be taken note of at this stage unless the suit filed by the respondent no.2 to declare the said judgment

and decree dated 20.3.2008 is decided in her favour. In view thereof, the evidence adduced by her particularly the record of the telephone calls, photographs attending a wedding together and her signatures in school diary of the child cannot be taken into consideration so long as the judgment and decree of the civil Court subsists. On the similar footing, the contention advanced by her counsel that even after the decree of divorce, they continued to live together as husband and wife and therefore the complaint under the Act 2005 is maintainable, is not worth acceptance at this stage.

23. In *D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469, this Court considered the expression “domestic relationship” under Section 2(f) of the Act 2005 placing reliance on earlier judgment in *Savitaben Somabhai Bhatiya v. State of Gujarat & Ors.*, (2005) 3 SCC 636 and held that relationship “in the nature of marriage” is akin to a common law marriage. However, the couple must hold themselves out to society as being akin to spouses in addition to fulfilling all other requisite conditions for a valid marriage.

The said judgments are distinguishable on facts as those cases relate to live-in relationship without marriage. In the instant case, the parties got married and the decree of Civil Court for divorce still subsists. More so, a suit to declare the said judgment and decree as a nullity is still pending consideration before the competent court.

25. In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions of the Act 2005 is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the court. Undoubtedly, for quashing a complaint, the court has to take its contents on its face value and in case the same discloses an offence, the Court generally does not interfere with the same. However, in the backdrop of the factual matrix of this case, permitting the court to proceed with the complaint would be travesty of

justice. Thus, interest of justice warrants quashing of the same.”

It would also be apposite to refer to the two Judges judgment of the Hon'ble Apex Court in *Juveria Abdul Majid Patni v. Atif Iqbal Mansoori* and another reported in (2014) 10 SCC 736. The Hon'ble Apex Court, after observing that it cannot be stated with any certainty that the divorce did take place on 09-5-2008, in absence of pleading, evidence and finding, framed issue for determination thus :

“18. Even if it is presumed that the appellant has taken “khula” (divorce) on 09-5-2008 and the first respondent is no more the husband, the question arises that in such case whether the erstwhile wife can claim one or other relief as prescribed under Sections 18, 19, 20, 21, 22 and interim relief under Section 23 of the Domestic Violence Act, 2005, if domestic violence had taken place when the wife lived together in shared household with her husband through a relationship in the nature of marriage.”

10. The Hon'ble Apex Court, after considering the statutory provisions and the decisions in *V.D. Bhanot v. Savita Bhanot* and *Inderjit Singh Grewal vs. State of Punjab & Anr.*, enunciates the law thus :

“30. An act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of

the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Domestic Violence Act, 2005 including monetary relief under Section 20, child custody under Section 21, compensation under Section 22 and interim or ex parte order under Section 23 of the Domestic Violence Act, 2005.”

The statement of law in paragraph 30 needs to be understood in the context of the facts noted in the earlier paragraph which reads thus :

“29. In the present case, the alleged domestic violence took place between January 2006 and 6-9-2007 when FIR No.224 of 2007 was lodged by the appellant under Sections 498-A and 406 IPC against the first respondent and his relatives. In a writ petition filed by the first respondent the High Court refused to quash the said FIR against him observing that prima facie case under Section 498-A was made out against him. Even if it is accepted that the appellant during the pendency of the SLP before this Court has obtained ex parte “khula” (divorce) under the Muslim Personal Law from the Mufti on 9-5-2008, the petition under Section 12 of the Domestic Violence Act, 2005 is maintainable.”

In *Zuveria Abdul Majid Patni vs. Atif Iqbal Mansoori and Another*, the domestic violence took place between January 2006 and 06-9-2007 on which date first information report under Sections 498-A and 406 of the Indian Penal Code was lodged by the wife against her husband and his relatives. It is in the context of these facts, that the Hon'ble Apex Court observes that even if it is accepted that during

the pendency of the special leave petition the wife obtained *ex parte* “khula” (divorce) under the Muslim Personal Law from the Mufti on 09-5-2008, the petition under Section 12 of the DV Act is maintainable.

11. Perusal of the petition under Section 12 of the DV Act would reveal that except stating that the petitioner-wife is living at the mercy of her elder brother and that the respondent-husband is well to do, there is not even a whisper about the nature or extent or the time line of the domestic violence. Concededly, the petitioner-wife did not, in the entire period of twenty-seven years from the dissolution of marriage, allege before any forum that she was subjected to domestic violence. In the light of the enunciation of law in ***Juveria Abdul Majid Patni vs. Atif Iqbal Mansoori and another***, if an act of domestic violence is committed, subsequent decree of divorce will not absolve the liability of the husband nor would aggrieved person be denied under the DV Act. However, in the facts at hand, there is absolutely no pleadings muchless evidence, to suggest that the petitioner-wife was subjected to domestic violence at any point in time, and therefore, to permit the petitioner-wife to prosecute with petition under Section 12 of the DV Act, instituted thirty-three years after the separation and twenty-seven years after the dissolution of marriage would be a serious

miscarriage of justice. The conscience of this Court is satisfied, that the petitioner-wife, whose claim to the relief is entirely predicated on her financial hardship and the prosperity of her former husband, is abusing the provisions of the Act by claiming relief thereunder twenty-seven years after the dissolution of marriage.

12. In *Inderjit Singh Grewal vs. State of Punjab & Anr.*, the Hon'ble Apex Court observes thus :

“24. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 Cr.P.C., that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Sections 28 and 32 of the Act 2005 read with Rule 15(6) of The Protection of Women from Domestic Violence Rules, 2006 which make the provisions of Cr.P.C. applicable and stand fortified by the judgments of this court in *Japani Sahoo v. Chandra Sekhar Mohanty*, AIR 2007 SC 2762; and *Noida Entrepreneurs Association v. Noida & Ors.*, (2011) 6 SCC 508.”

The observations in *Inderjit Singh Grewal vs. State of Punjab & Anr.* were referred to by the Hon'ble Apex Court in *Krishna Bhattacharjee v. Sarathi Choudhary and Another* reported in (2016) 2 SCC 705. However, the Hon'ble Apex Court held that it was not

necessary to advert to the said aspect in the factual matrix of ***Krishna Bhattacharjee v. Sarathi Choudhary and Another***. The relevant observations in ***Krishna Bhattacharjee v. Sarathi Choudhary and Another*** read thus :

“16. It may be noted that a submission was advanced by the wife with regard to the applicability of [Section 468 CrPC](#). While dealing with the submission on the issue of limitation, the Court opined : (*Inderjit Singh Grewal case*, SCC p. 599, para 32)

“..... in view of the provisions of [Section 468 CrPC](#), that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of [Sections 28 and 32](#) of the 2005 Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006 which make the provisions of CrPC applicable and stand fortified by the judgments of this Court in *Japani Sahoo v. Chandra Sekhar Mohanty* and *Noida Entrepreneurs Assn. v. Noida*.

17. As it appears, the High Court has referred to the same but the same has really not been adverted. In fact, it is not necessary to advert to the said aspect in the present case.”

In ***Krishna Bhattacharjee v. Sarathi Choudhary and Another***, the issue which fell for consideration was whether the wife ceased to be an aggrieved person in view of the decree of judicial separation. Addressing the said issue, the Hon'ble Apex Court observed thus :

“18. The core issue that is requisite to be addressed is whether the appellant has ceased to be an “aggrieved person” because of the decree of judicial separation. Once the decree of divorce is passed, the status of the parties becomes different, but that is not so when there is a decree for judicial separation. A three-Judge Bench in *Jeet Singh v. State of U.P.* though in a different context, adverted to the concept of judicial separation and ruled that the judicial separation creates rights and obligations. A decree or an order for judicial separation permits the parties to live apart. There would be no obligation for either party to cohabit with the other. Mutual rights and obligations arising out of a marriage are suspended. The decree however, does not sever or dissolve the marriage. It affords an opportunity for reconciliation and adjustment. Though judicial separation after a certain period may become a ground for divorce, it is not necessary and the parties are not bound to have recourse to that remedy and the parties can live keeping their status as wife and husband till their lifetime.

23. In view of the aforesaid pronouncement, it is quite clear that there is a distinction between a decree for divorce and decree of judicial separation; in the former, there is a severance of status and the parties do not remain as husband and wife, whereas in the later, the relationship between husband and wife continues and the legal relationship continues as it has not been snapped. Thus understood, the finding recorded by the courts below which have been concurred by the High Court that the parties having been judicially separated, the appellant wife has ceased to be an “aggrieved person” is wholly unsustainable.”

13. In *Krishna Bhattacharjee v. Sarathi Choudhary and Another*, the Hon'ble Apex Court held that the retention of stridhan is a continuing offence and as long as status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under Section 12 of the DV Act. The

relevant observations of the Hon'ble Apex Court read thus :

“32. Regard being had to the aforesaid statement of law, we have to see whether retention of stridhan by the husband or any other family members is a continuing offence or not. There can be no dispute that wife can file a suit for realization of the stridhan but it does not debar her to lodge a criminal complaint for criminal breach of trust. We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of “aggrieved person” clearly postulates about the status of any woman who has been subjected to domestic violence as defined under [Section 3](#) of the said Act. “Economic abuse” as it has been defined in [Section 3\(iv\)](#) of the said Act has a large canvass. [Section 12](#), relevant portion of which has been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. It has been held in *Inderjit Singh Grewal* that [Section 498](#) of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under [Sections 28](#) and [32](#) of the said Act read with [Rule 15\(6\)](#) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the same as we are of the considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under [Section 12](#) of the 2005 Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. The concept of “continuing offence” gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act.”

14. The enunciation of law by the Hon'ble Apex Court in *Inderjit Singh Grewal vs. State of Punjab & Anr., Zuveria Abdul Majid Patni vs. Atif Iqbal Mansoori and Another, V.D. Bhanot v. Savita Bhanot*

and Krishna Bhattacharjee v. Sarathi Choudhary and Another does not take the case of the petitioner any further. The marital relationship is severed since twenty-seven years prior to the institution of the proceedings under the DV Act. The petition is entirely predicated on the premise that since the petitioner-wife is facing hardship, notwithstanding that the marriage is dissolved in 1987, her well to do husband must support her financially. Concededly, there is no interaction whatsoever between the petitioner-wife and the respondent-husband since the dissolution of marriage, not a single instance of domestic violence is pleaded in the petition the theme of which is that the petitioner-wife is living at the mercy of her elder brother. Even if it is assumed, *arguendo*, that the limitation prescribed under Section 468 of the Criminal Procedure Code is not applicable, it is trite law, that any initiation of the proceedings under the statute must be done within a reasonable period. Even if the utmost latitude is given to the petitioner-wife and it is assumed that she was subjected to domestic violence prior to the dissolution of marriage, the institution of the petition under Section 12 of the DV Act after twenty-seven years of the dissolution of marriage is, as observed *supra*, a gross abuse of the statutory provisions.

15. In any view of the matter, the petition is sans substance and is rejected. No order as to costs.

adgokar

JUDGE