



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 101 OF 2021

- . Janardhan s/o Bhimrao Harne
Age: 47 years, Occu.: Service,
R/o. 140, N-2, S.T.Colony,
Opp. Sanya Motors, Mukundwadi,
Aurangabad, Dist.Aurangabad.Applicant
(Org. Respondent)

Versus

1. Rekha W/o. Janardhan Harne
Age: 46 years, Occu.: Household.
2. Ganesh s/o Janardhan Harne
Age: 09 years, Minor.
Both R/o. Torna Complex, N-9,
T.V. Center Area, CIDCO, Aurangabad,
District Aurangabad.Respondents
(Org. Applicants)

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WITH CRIMINAL REVISION APPLICATION NO. 103 OF 2021

1. Rekha W/o. Janardhan Harne
Age: 46 years, Occu.: Household.
2. Ganesh s/o Janardhan Harne
Age: 09 years, Minor.
U/G. of Petitioner No.1.
Both R/o. Torna Complex, N-9,
T.V. Center Area, CIDCO, Aurangabad,
District Aurangabad.Respondents
(Org. Applicants)

Versus

- . Janardhan s/o Bhimrao Harne
Age: 47 years, Occu.: Service,
R/o. 140, N-2, S.T.Colony,
Opp. Sanya Motors, Mukundwadi,
Aurangabad, Dist.Aurangabad.Applicant
(Org. Respondent)

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Advocate for Applicant Husband in Revn/101/2021 and for
respondent in Revn/103/2021 : Mr. Bhushan S. Dhawale
Advocate for Respondent no.1 Wife and respondent no.2 Son in
Revn/101/2021 and for applicants in Revn/103/2021
: Mr. S.R.Bodade

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 09 FEBRUARY, 2026

PRONOUNCED ON : 16 FEBRUARY, 2026

JUDGMENT :

1. Both above revisions are directed against common judgment passed by learned Adhoc District Judge-1 and Additional Sessions Judge, Aurangabad, while deciding Criminal Appeal (PWDVA) No.12 of 2020, which is at the instance of wife and son, challenging order passed by learned Judicial Magistrate First Class (JMFC), Court No.20, Aurangabad in PWDVA Application No.108 of 2017 dated 10-01-2020, whereas Criminal Appeal (PWDVA) No.19 of 2020 is at the instance of husband, thereby challenging the same order of learned JMFC, Aurangabad

2. Facts leading to above proceedings are that, revision petitioners of Criminal Revision Application No.103 of 2021 (who are wife and son) instituted proceedings bearing PWDVA Application

No.108 of 2017 before learned JMFC, Aurangabad by invoking provisions under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short “DV Act”) against husband setting up a case that, on 16-06-2007, petitioner no.1 wife performed Temple marriage with respondent Janardhan Bhimrao Harne and it was her case that, out of their wedlock, they have a son namely Ganesh (petitioner no.2). That, she was treated properly up to October, 2011, but thereafter, she was mal-treated, assaulted and subjected to physical and mental cruelty. That, husband had suppressed his previous marriage and that he had two children. That, respondent husband started neglecting them both so she filed complaint before CIDCO Police Station. It is her case that, respondent husband, was working in Police Department and in October, 2011, while she was pregnant, she was mercilessly beaten and driven out of house and therefore, she was constrained to reside in a rental premises. That, she has no independent means and source of income to maintain herself as well as her child, whereas respondent husband earned over Rs.40,000/- by way of salary and he has distinct rental income as well as agricultural income and therefore, she set up above application seeking multiple reliefs including monetary reliefs.

During pendency of the proceedings under the DV Act, by

order date 19-07-2017 passed on application Exh.1, interim maintenance was granted to the wife and son to the tune of Rs.2,500/- per month each.

3. Above proceedings were resisted by respondent husband denying the very factum of marriage and about he to be father of Ganesh. It is his case that, all allegations and accusations are false and documents relied by wife are manufactured and fabricated one.

Both sides adduced oral as well as documentary evidence to substantiate their cases. Finally, on appreciating the same, learned JMFC, by order dated 10-01-2020, passed a detailed order partly allowing the claim directing payment of Rs.3,000/- per month to each of the petitioners i.e. wife and son, compensation of Rs.25,000/- and cost of litigation and passed necessary directions to prevent respondent from inflicting violence.

4. It appears that, dissatisfied by the above judgment, wife and son, again knocked doors of the First Appellate Court vide Criminal Appeal (PWDVA) No.12 of 2020 primarily on the ground of inadequate maintenance.

Similarly, original respondent husband also challenged above

order of JMFC vide Criminal Appeal (PWDVA) No.19 of 2020 thereby questioning legality and sustainability of order passed by learned JMFC.

Learned Adhoc District Judge-1 and Additional Sessions Judge, Aurangabad, allowed appeal filed by wife and son modifying the quantum from Rs.3,000/- per month each to Rs.6,000/- per month each and maintained the remaining order of the learned JMFC intact.

Vide the same judgment, appeal at the instance of respondent husband bearing Criminal Appeal (PWDVA) No.19 of 2020 came to be dismissed.

Feeling aggrieved by the above order of learned First Appellate Court, again both wife and husband have approached this Court by way of instant revision petitions by invoking Section 397 of the Code of Criminal Procedure.

5. Before advertng to the merits of the matters, it would be fruitful to spell-out the scope for this Court while entertaining revisionary powers.

While exercising powers under Section 397 of the Cr.P.C., this court is merely expected to test the legality, propriety or illegality in

the findings recorded by learned trial court. Such powers are to be exercised to prevent miscarriage of justice and when there are glaring errors on the face of order or there is failure and non compliance of law. Re-appreciation is to be avoided unless findings are patently perverse and as such, is the narrow scope of revisional court. Law regarding the scope of revision is elucidated in catena of judgments. Though there are catena of judgments, the landmark judgment of ***Amit Kapoor v. Ramesh Chander and another* (2012) 9 SCC 460** is relied and the relevant observations therein are borrowed and quoted as under :

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well - founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based

on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits."

6. Heard both sides at length, wherein both learned counsel took this Court through the length and breadth of the impugned judgment and order passed by learned JMFC as well as by learned First Appellate Court. They also took this Court through the nature of evidence adduced by each of them before the learned trial court i.e. learned JMFC.

In support of their case, learned counsel for petitioners wife and son sought reliance on the decision of the Hon'ble Supreme Court in the cases of *Chanmuniya v. Virendra Kumar Singh Kushwaha and Anr.*, 2010 AIR SCW 6497; *Lalita Toppo v. State of Jharkhand and Anr.*, 2018 STPL 13084 SC; *Tulsa and Ors. v. Durghatiya and Ors.*, 2008 STPL 2617 SC; *Dwarika Prasad Satpathy v. Bidyut Prava Dixit and Another*, 1999 STPL 11201 SC; *Vimala v. Veeraswamy*, 1991 STPL 2373 SC; *S.R.Batra and Another v. Taruna Batra (Smt) in Civil Appeal No.5837 of 2006 (Arising out of SLPs (C) Nos.6651-52 of 2005) dated 15-12-2006*; *Saraswathy v. Babu*, in *Criminal Appeal No.1999 of 2013 dated 25-11-2013*; *Smt.Ass Kaur*

(Deceased) by L.Rs. v. Kartar Singh (Dead) by L.Rs. And Ors., 2007 (5) ALL MR 909, Neelam Gupta v. Mahipal Sharan Gupta and Another, 2020(2) Crimes 83 (SC). He also relied on the decision of Delhi High Court in the case of *Shabana v. Shahid Beg* dated 09-08-2017.

To buttress his submissions, the learned counsel for the respondent husband has placed reliance on the decision of the Hon'ble Supreme Court in the cases of *D.Velusamy v. D.Patchaiammal, (2010) 10 SCC 469; Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755; Sheetal Chandrakant Kunjir v. Chandrakant Tukaram Knjir and Ors., MANU/MH/0127/2026; Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and Ors., (1988) 1 SCC 530 .*

7. At the outset, it needs to be noted that wife herself claimed that earlier she was married to one Jaywant Sitaram Sonawane and that she had sought divorce from him. But there is no iota of evidence in this direction i.e. on the point of divorce.

However, in support of her case, apart from her own evidence, she adduced evidence of Abhishek Jaywant Sonawane (son from her first marriage) at Exh.11, her own sister Bharati Chandrashekhar

Mandge at Exh.34 and her brother-in-law Bharat Muralidhar Jadhav at Exh.39 particularly on the factum of her marriage and relation with respondent husband.

8. On the other hand, while refuting the case of relation as husband and wife, husband adduced evidence of official of Municipal Corporation working in the Birth and Death Registration Section namely DW2 Kamlakar Madhukarrao Dnyate at Exh.70, he also adduced evidence of DW3 Dinesh Pandurang Pund at Exh.73, and DW4 Shripad Govindrao Patil at Exh.79, who were HR Manager and General Manager (HR) respectively of Radico Company wherein first husband of wife namely Jaywant Sonwane was in employment. That apart, he also adduced evidence of DW5 Dr.Aparna Raul at Exh.92, who ran Avishkar Hospital where birth of Ganesh i.e. present petitioner no.2 took place.

Thus, above is the sum total of evidence adduced by both of the sides before learned JMFC, who conducted proceedings bearing PWDVA Application No.108 of 2017.

9. Here, it is noticed that except branding such documents to be false and fabricated, there is no counter evidence by respondent husband. Whatever evidence is adduced by him is regarding previous

marriage of wife and birth of a child from first marriage, which is at all not refuted by wife.

On studying the above evidence, it is noticed that, petitioner no.1 wife has placed on record various documents collectively at exh.3, 12, 17, 28, 59, 62, 69 and 111 including photographs of petitioner no.1 wife and respondent husband and Government papers carrying names of both of them.

On the strength of above evidence on behalf of petitioner no.1 wife, it seems that she projected herself to be wife of respondent. She has also placed on record copies of complaint filed by her at Cidco Police Station as well as before Women Grievances Redressal Cell. There, she has specifically contended that respondent was visiting her and staying with her since 2007 to 2016. Her son Abhishek (from first husband) has also deposed about party to the Temple marriage at Verul. He has also specified the date of assault on petitioner no.1 wife on 19-05-2016.

In the documents pertaining to school of Ganesh, name of present respondent is appearing. There is no serious challenge to said documentary evidence atleast before the learned JMFC. Consequently, there are reasons to hold that there were some sort of

relations between revision petitioner no.1 wife and husband.

10. Petitioner no.1 wife has consistently maintained that, after marriage, she initially went to stay with respondent husband at his place and after few days, on objection being taken by his mother, he shifted her and dropped her at Torna Complex where she used to reside initially. But again, it is her evidence that, he was visiting her there also and inflicting violence and threats.

11. Admittedly, revision petitioner no.1 wife, in her initial proceedings before learned JMFC invoked the provisions of the DV Act.

What is meant by “**domestic relationship**” has been defined in **section 2(f)**, *which means a relationship between two persons who live or have, at any point of time, lived together in a shared household.*

Similarly, **Section 2(q)** defines “**respondent**” *as any male adult person, who is, or has been, in domestic relationship with aggrieved person* and definition of “**aggrieved person**” is provided in **Section 2(a)** of the DV Act.

Having comprehended the above definitions and on taking into

account the object of the above Act, there is no denial that it is a progressive Legislation, enacted with sole intention to protect woman “irrespective” of her relation, which she shares with respondent. It is an enactment for providing immediate remedies to aggrieved woman.

It would be apposite to refer to the decision of Three Judges Bench of Hon’ble Supreme Court in the case of ***Lalita Toppo v. State of Jharkhand and Another***, [(2019) 13 SCC 796] in which it is held that, “2005 Act provides an efficacious remedy for maintenance even if victim is ***not the legally wedded wife***, and infact under the provisions of Protection of Women from Domestic Violence Act, 2005, the victim i.e. estranged wife or live-in partner would be entitled to more reliefs than what is contemplated under Section 125 of the Cr.PC. namely, to a shared household also”.

Yet again, in the case of ***Chanmuniya v. Chanmuniya Virendra Kumar Singh Kushwaha*** [(2011) 1 SCC 141], which is also referred and relied by learned JMFC, the Hon’ble Apex Court held that, “where a man, who lived with a woman for a long time and ***even though they may not have undergone legal necessities of valid marriage***, should be made liable to pay maintenance, if he deserts her. A man should not be allowed to benefit from the legal loopholes

by enjoying advantages of a de facto marriage without following duties and obligations”.

Again in the case of *D.Velusamy v. D.Patchaiammal*, (2010) 10 SCC 469, which is referred to by learned Counsel for revision petitioner husband, the Court had occasion to consider the provision of 2(f) of DV Act to draw conclusion that “*relationship in the nature of marriage is akin to common law marriage*”.

12. In the light of above legal position, here, as stated above, before the learned JMFC, petitioner no.1 wife indeed has placed material suggesting her cohabitation with respondent husband. She has filed complaints, copies of which are placed on record and has also placed on record copy of FIR, photographs, Memory Card, Pen Drive regarding instance dated 19-05-2016, though she failed to place on record Certificate under Section 65B of the Indian Evidence Act.

Resultantly, here, there is material to draw inference that there were relations in the nature of marriage. Petitioner no.1 wife has invoked Section 12 of the DV Act. The object of the said Act is to grant and ensure protection and maintenance to a woman which is its salient feature. Consequently, though there is no legal proof of

alleged marriage at Verul, there is other material as stated above including evidence of petitioner's son from first marriage, her sister and her brother-in-law, who too claimed and endorsed relations between the parties as husband and wife.

13. The learned JMFC indeed had an advantage to appreciate the entire oral and documentary evidence. The existing legal provisions seem to be touched at respective places and time, and only on getting satisfied that wife is entitle to relief, the same has been extended. How learned trial Court erred in correctly appreciating the evidence as well as law and what patent illegality has been committed, has not been demonstrated by respondent husband.

Bearing in mind the limited scope in revision, this Court does not find there to be any reason to interfere in the impugned common Judgment order of the learned First Appellate Court. Accordingly, following order is passed :

ORDER

Criminal Revision Application Nos.101 of 2021 and
103 of 2021 stand dismissed.

(ABHAY S. WAGHWASE)

JUDGE

14. On pronouncement of this Judgment, Mr.B.S.Dhawale, learned Counsel for revision petitioner husband in Criminal Revision Application No.101 of 2021, submits that, he intends to approach the Hon'ble Apex Court against the today's order and therefore, he urges to continue the interim relief granted by this Court vide order dated 08-10-2021, for a period of six weeks from today.

15. Learned counsel for respondent nos.1 and 2 opposes the same.

16. Considering the above request made by learned Counsel for revision petitioner husband, to enable him to approach the Hon'ble Apex Court, the interim relief granted by this Court vide order dated 08-10-2021, is continued for a period of six weeks from today.

(ABHAY S. WAGHWASE)
JUDGE

SPT