

CRIMINAL APPEAL NO.492/2021.

JUDGMENT

MHCC020163302021



Presented On : 28.12.2021.
Registered On : 28.12.2021.
Decided On : 10.12.2022.
Duration : 00Y 11M 13D

IN THE COURT OF ADDITIONAL SESSIONS JUDGE MUMBAI,

AT GR. BOMBAY

CRIMINAL APPEAL NO. 492 OF 2021.

IN

C.C.NO. 1/DV/2018.

... Appellant/
Org. Respondent.

Vs.

... Respondent/
Org. Applicant

Appearance :-

Ld. Adv. Mr. Anil Jadhav for the Appellant.

Ld. Adv. Mr. Praful Chavan for the Respondent.

CORAM : H.H. THE ADDITIONAL SESSIONS JUDGE,
DR. A. A. JOGLEKAR (C.R.NO.37.)

DATED : 10TH DECEMBER, 2022.

J U D G M E N T

Appellants being aggrieved by the impugned judgment/order dated 24.11.2021 passed in CC.No. 1/DV/2018, by

the Ld. Metropolitan Magistrate, 45th Court, Kurla, Mumbai, seeks to set aside and quashing the impugned order passed by the Ld. Trial Court.

2. The fulcrum of the facts giving rise to file present appeal ensue as under,
3. The parties in the appeal would be referred to, as per their original nomenclature in the proceeding before Ld. Trial Court.
4. It is the case of the applicant that, the applicant and respondent No. 1 i.e. the husband entered into a wedlock as on 24.12.2016 as per the customary rites and rituals of the parties. It is further stated that, after such solemnization of marriage the applicant cohabited with the respondent No. 1 at the matrimonial premises at Gowandi, Mumbai. It is stated that, the Mother-in-law of the applicant post engagement demanded several household articles and that due to the incapacity shows by the applicant's parents the marriage was called out. Further, upon the apology by the mother-in-law of the applicant the demands were withdrawn and inspite of the same the applicant's parents had gifted her several such gifts and articles inclusive of gold ornaments etc. to the respondent No. 1 husband. Post their marriage the applicant was sent by the respondent No. 1 to her parental home for a few days and that thereafter, she was informed that, they would go for honeymoon later on.

5. Accordingly, the applicant was at her parental home as on 04.01.2017 and thereafter as on 05.01.2017 the applicant returned to her matrimonial home. However, there was no consummation of marriage until 14.01.2017 and when the respondent No. 1 was asked about such fact, he stated nothing. Further, the applicant was preparing for competitive exams which were due on 28.01.2017. Thereafter, respondent No. 1 started coming late at night under the garb of the workload in the office. The applicant also apprehended of any such extra marital affairs as certain things were noticed by her. Further, the application mentioned for several such incidents, more especially with regard to the fact that as on 04.03.2017 while the applicant was studying and respondent No. 1 was asleep it came to her notice that the respondent No. 1 was indulged in sex chatting with a male. It is also stated that, later the respondent No. 1 create fictitious facebook account and the said facebook account reflects for respondent No. 1's compromising position with other men.

6. Further, several such attempts were made by the applicant to establish relation with the respondent No. 1, but they were in vain. Applicant also went to her family doctor and disclosed the behaviour of the respondent No. 1 for the purpose of availing such medicines in order to cure the behavioral pattern of the respondent. Respondent No. 1 never co-operated and conceded for the same. Lastly, at the conclusion of six months of the marriage the applicant states that, there was no marital intercourse or any such affection from respondent No. 1 and the atmosphere of such strained relationship continued at the matrimonial house. And therefore, the applicant

was constrained to return back to her parental home. The non cohabitation and the failure of marital duties has made the life of the applicant miserable. Hence, the applicant had filed such application before the Ld. Trial Court which came to be partly allowed by way of impugned judgment/order.

7. Per contra respondent No. 1 stated that, the applicant has failed to file any such documentary evidence in respect of the contentions stated in her application. In this regard, the respondents have categorically agitated the fact that, the expenses pertaining to marriage and the marriage ceremony are not substantiated by way of any bills etc., more especially when the applicant herself had admitted upon her testimonial evidence that, she has not filed any such bill or engagement/marriage expenses etc. at the record of the Ld. Trial Court. Further, it is stated that the applicant's allegations are vague and that except incident mentioned in para Nos. 6, 7 and 8 no any demand is mentioned which in itself proves that the applicant's contention, were without any basis. The factum of domestic violence also is not proved qua no such single incident has been stated therein. On the contrary it is admittedly stated that, the applicant voluntarily left the matrimonial home as on 24.06.2017.

8. Further, it is categorically stated that, it was the applicant who didn't allow the respondent No. 1 to keep physical relationship with her on the pretext of herself being preparing for competitive exams. It is also contended that the applicant used to always raise

suspicion on the respondent No. 1 and that she herself was not willing to cohabit in the matrimonial home. It is stated that, there is no such website as disclosed by the applicant nor did the respondent No. 1 change his name and had such chats anybody else. It is further stated that, the respondent No. 1 is in service at CIDCO, the shared household is owned by respondent No. 2 and respondent No. 1 does not have any shares or fix deposits and does not have any source of income. And that when the applicant herself has withdrawn from the society of the respondent, she is not entitled for any such relief. On the contrary she is in service and earns good income. Hence, the respondents prayed for dismissal of the petition.

9. The impugned judgment/order mentions that, the applicant testified herself vide Exh.20 while the respondent failed to examine any witness on his behalf including himself. Post affording opportunity to either parties the impugned judgment/order was passed.

10. Ld. Advocate for respondent No. 1 states that, the judgment/order of the Ld. Trial Court is in transgression to the very concept of the termed aggrieved person, more especially when the applicant failed to have stated as to who caused domestic violence to her. For example, physical, sexual, verbal, economic and any other type against her. Also, that the forms produced by the applicant are not admissible under the purview of Evidence Act. Also, that the Ld. Trial Court failed to appreciate the factum of income of the either parties and also that the applicant being an earning lady and the

respondent No. 1 burden with loan, the impugned judgment/order came to be passed. Further, that it is also not the contention of the applicant that, she is unable to maintain herself and hence, considering the same respondent No. 1 prayed for allowing the appeal thereby setting aside and quashing the judgment/impugned order.

11. Ld. Advocate for applicant states that, the judgment/order passed by the Ld. Trial Court requires no interference and that the Ld. Trial Court has rightly observed that, the appellant has cause such domestic violence to the respondents. Further inspite of having such opportunity the respondents have failed to lead such evidence. Therefore, absence of any such documentary or testimonial evidence disentitles the respondent No. 1 any such relief as agitated by way of this appeal. Hence, the Ld. Advocate for applicant prayed for dismissal of appeal.

12. Heard Ld. Advocate for Appellant and Ld. Advocate for respondents. Perused Appeal Memo and written submissions filed by either parties.

13. In the aforesaid parlance following points arise for determination. I have recorded my findings for the reasons as follows :

Sr. No.	Points	Findings
1.	Whether the applicant proves that, she was subjected to such acts of Domestic Violence by the respondents?	Yes.

2.	Whether the applicant proves that, she is entitled for such relief as agitated by her?	Yes
3.	Whether the indulgence and interference in the impugned order is necessitated at the hands of this Court?	No.
4.	What Judgment/Order?	Appeal is Dismissed.

:REASONS:**AS TO POINT NOS. 1 TO 3 :-**

14. As the point Nos. 1 to 3 are intertwined and interwoven the same are held for appreciation together to avoid re-agitation of facts. It evinces to myself that, the factum of wedlock is not denied by either parties. Secondly, it is the case of the applicant that, the respondent No. 1 had failed to fulfill the marital obligations as expected and the reason assigned for the same is certain such incidents which she states with regard to such sexual inability of the respondent No. 1 to perform such marital obligation. In this regard, she has stated that, the respondent No. 1 never ever had complied with any such marital obligation, as he was sexually inactive for the reason that he was committed with certain other male individuals. Also, it is stated that, he consumed such instigating tablets and more especially when he never had any such intercourse with her. Further, the respondent No. 1 has categorically denied this contention thereby stating that no such website ever exists and that the contentions pertaining to his sexual inability are not fortified by any documentary evidence as such. It is the case of the respondent that the applicant has failed to state the form of domestic violence caused to her. It will

be profitable to reproduce the term domestic violence as envisaged under Section 3 of the Domestic Violence Act.

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) harms or injures or endangers the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to he aggrieved person.

15. Considering the tenor of Section 3 of the Domestic Violence Act it can be clearly inferred that, the term domestic violence in corporates for a wider scope and it is not at all limited for mere physical injuries or abuse, but the same can also be stretched pertaining to sexual, verbal, emotional and economical abuse. And therefore, it is rightly observed by the Ld. Trial Court that any act or omission or commission or conduct of respondent in violation of the same would naturally let the conduct under the purview of domestic violence. It is the case of the respondent No. 1 that, the documentary

evidence pertaining to any such sex chat with a male gender is not substantiated by way of any such evidence.

16. I have perused the testimonial evidence. It evinces to myself that, the applicant has categorically stated to have accessed the photographs stored in respondents mobile, wherein his nude photographs could be located alongwith the other male individuals and in order to buttress her contention the screen-shots were filed on record. It is evident that, the said contents accessed and retrieved by her from the respondent No.1's mobile phone has naturally caused such trauma, distress and emotional abuse to the applicant. It is also evident that, while such documents qua screen-shots taken from the respondent No.1's mobile were led under evidence, those were not questioned or challenged or put to the applicant in her cross-examination, more especially the same was not even rebutted by way of written submissions.

17. Thus, the factum of marriage is unrebutted and therefore, it can be well construed that, the applicant has definitely being subjected to such emotional and mental abuse from the respondents. Admittedly, now the applicant is residing apart from the respondents and as the factum of marriage and domestic violence is substantially proved, hence, it is incumbent upon the respondent No. 1 to maintain the applicant as the applicant at present has left the job, wherein she was engaged.

18. I have minutely perused the judgment/order of the Ld. Trial Court and it evinces to myself that, the factum of assets and

liabilities is well construed and alongwith the same, the factum of the residential accommodation is well appreciated upon the factual matrix. Therefore, in view of the same, the Ld. Trial Court after affording opportunities to either parties, and considering the testimonial and documentary evidence alongwith the assets and liabilities of either parties have passed the impugned judgment/order, which in my considerate view does not require any indulgence at the hands of this Court. Resultantly, I answer point Nos. 1 and 2 in the affirmative, while point No. 3 answered in the negative. Accordingly, point No. 4 is answered by following order infra :-

ORDER

1. Criminal Appeal No. 492 of 2021 is dismissed.
2. The impugned judgment/order dated 24.11.2021 passed in CC.No. 1/DV/2018, by the Ld. Metropolitan Magistrate, 45th Court, Kurla, Mumbai, is hereby confirmed.
3. Record and proceedings if received at the record of this Court be sent to the Ld. Trial Court and copy of this judgment alongwith writ be sent to the Ld. Trial Court forthwith.
4. Criminal Appeal No. 492 of 2021 stands disposed of accordingly.

Judgment is dictated and pronounced in the open Court.



(DR. A. A. JOGLEKAR)
Additional Sessions Judge,
City Civil & Sessions Court,
Gr. Bombay (C.R.37.)

Date : 10.12.2022.

Dictated on : 10.12.2022.

Transcribed on : 12.12.2022.

HHJ signed on : 21.12.2022

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

Upload Date	Upload Time	Name of Stenographer
22.12.2022	11.09 p.m.	Mahendrasing D. Patil (Stenographer Grade-I)

Name of the Judge (With Court Room No.)	HHJ DR. A. A. JOGLEKAR (Court Room No. 42)
Date of Pronouncement of JUDGMENT /ORDER	10.12.2022
JUDGMENT /ORDER signed by P.O. on	21.12.2022
JUDGMENT /ORDER uploaded on	22.12.2022