



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

11 CRIMINAL WRIT PETITION NO. 1341 OF 2015

DR. ANIL SURAJMAL ZAWAR AND ORS

VERSUS

SMT. SNEHA SUNIL ZAWAR AND ANR

...

Advocate for the Petitioners : Mrs. Deshmukh Charuta Sunil

APP for Respondent/State : Mr.S.P. Sonpawale

Advocate for Respondent no.1 : Mr. Patil Vijay B.

...

AND

CRIMINAL WRIT PETITION NO. 190 OF 2016

SUNIL S/O. SURAJMAL ZAWAR

VERSUS

SMT. SNEHA SUNIL ZAWAR AND OTHERS

...

Advocate for the Petitioner : Mr. Patil Milind M. (Beedkar)

APP for Respondent/State : Mr.S.P. Sonpawale

Advocate for Respondent no.1 : Mr. V.B. Patil

...

AND

**CRIMINAL APPLICATION NO. 1404 OF 2022
IN WP/1341/2015**

DR. ANIL SURAJMAL ZAWAR AND OTHERS

VERSUS

SMT. SNEHA SUNIL ZAWAR AND OTHERS

...

Advocate for Applicant : Mrs. Deshmukh Charuta Sunil

APP for Respondent/State : Mr.S.P. Sonpawale

AND

**CRIMINAL APPLICATION NO. 1405 OF 2022
IN WP/190/2016**

SUNIL S/O. SURAJMAL ZAWAR

VERSUS

SMT. SNEHA SUNIL ZAWAR AND OTHERS

...

Advocate for Applicant : Mr. Patil Milind M. (Beedkar)

APP for Respondent/State : Mr.S.P. Sonpawale

**WITH
CRIMINAL APPLICATION NO. 2375 OF 2016
IN WP/1341/2015**

DR. ANIL SURAJMAL ZAWAR AND ORS

VERSUS

SMT. SNEHA SUNIL ZAWAR AND ANR

...

Advocate for Applicant : Mrs. Deshmukh Charuta Sunil

APP for Respondent/State : Mr.S.P. Sonpawale

**WITH
CRIMINAL APPLICATION NO. 2376 OF 2016
IN WP/190/2016**

SUNIL S/O. SURAJMAL ZAWAR

VERSUS

SMT. SNEHA SUNIL ZAWAR AND OTHERS

...

Advocate for Applicant : Mr. Patil Milind M. (Beedkar)

APP for Respondent/State : Mr.S.P. Sonpawale

Advocate for Respondent No.1 : Mr. V.B. Patil

...

CORAM : **SHIVKUMAR DIGE, J.**

DATE : 29th July, 2024.

ORAL ORDER :

1. The learned counsel for the applicants in Criminal Application Nos.1404 of 2022 and Criminal Application No.1405 of 2022 submits that by these applications, the applicants are seeking permission for production of documents and these documents are produced on record, hence these applications have become infructuous and can be disposed off.

2. Considering the submissions of learned counsel for the applicants, these applications are disposed off as they have become infructuous.

3. The issue involved in Writ Petition Nos. 1341 of 2015 and Writ Petition No.190 of 2016 is same as in these writ petitions, the petitioners are challenging the judgment and order passed by the learned Additional Sessions Judge, Bhusawal (For short, “ Lower Appellate Court”) in Criminal Appeal No.158 of 2014 dated 16th September, 2015. By way of the impugned judgment and order, the learned Lower Appellate Court has partly allowed the appeal filed by the petitioners and has modified the order passed by the Judicial Magistrate, First Class, Muktainagar (For short, “ trial Court”) in Criminal Misc. Application No. 29 of 2009. The trial Court by the judgment and order granted a maintenance of Rs.10,000/- to original petitioner i.e. respondent no.1 and also directed the original opponents i.e. petitioners to pay Rs.5,00,000/- as a compensation to the respondent no.1, for indulging into domestic violence. The learned Lower Appellate Court has partly allowed the appeal and directed the original opponents i.e. petitioners to pay maintenance of Rs.10,000/- per month and Rs.5,00,000/- as compensation.

4. In writ petition no.1341 of 2015, the petitioner no.1 is the brother-in-law and petitioner no.2 is the sister-in-law of the respondent no.1. During pendency of the petition, petitioner nos. 3 and 4 have died. In

writ petition no.190 of 2016, the petitioner is the husband of respondent no.1.

5. The learned counsel for the petitioners in both writ petitions submits that they are not disputing the maintenance amount of Rs.10,000/- per month, hence they are not pressing the issue of maintenance amount.

6. Brief facts of the case are as under :-

The respondent no.1 got married with the petitioner in criminal writ petition no.190 of 2016 on 7th June, 1993. After marriage, she resided in a joint family consisting of the petitioners. It is alleged that the petitioners harassed the respondent no.1 mentally and physically on different grounds. The respondent No.1 had filed an application seeking various reliefs under the provisions of Protection of Women From Domestic Violence Act (For short, "D.V. Act") in the trial Court. She alleged *inter alia* that in the marriage her father had given 70 Tolas gold, some silver ornaments and cash amount of Rs.3,00,000/- and many other things for domestic purposes as stridhan. It is alleged that the petitioners used to say that the marriage was not performed upto their expectations and they have been deceived in the marriage. They used to insult respondent no.1. It is further alleged that respondent no.1 was forced to go for an abortion. In the year 1999, the petitioners had assaulted the respondent no.1 and abused her. They used to make demand of money from her parents. It is alleged that respondent

no.1 told to her parents about the ill treatment by petitioners. It is further alleged that when respondent no.1 was pregnant for 2nd time, the petitioners used to say that second child would be a female child and she was forced to go for an abortion. It is alleged that husband/petitioner assaulted the respondent no.1 mercilessly due to which her tooth was broken. In sum and substance, it is alleged that the petitioners would cause mental and physical harassment to the respondent no.1.

7. It is contention of the learned counsel for the petitioners that the allegations against the petitioners are false and baseless. The petitioners have been acquitted from the offenses punishable under section 498-A of the Indian Penal Code on the complaint filed by the respondent no.1. No allegations of mental harassment and physical torture are proved against the petitioners but these facts are not considered by the trial Court and Lower Appellate Court. The learned counsel further submitted that as per section 22 of the D.V. Act, the compensation should be for damages of injuries. No injuries are caused to respondent no.1 but these facts are not considered by the Lower Appellate Court. The learned counsel further submitted that there is no proof and even doctor, who had issued certificate for loosening of the tooth, has not been examined. The trial Court and Lower Appellate Court have observed that husband of respondent no.1 petitioner tried to commit suicide would amount to domestic violence,

which is erroneous. The trial Court and Lower Appellate Court have not given reasons on which basis the compensation amount of Rs.5,00,000/- is given. The reason for the attempt to commit suicide by the husband of respondent no.1 was due to quarrel between the petitioners, it can not be considered as mental harassment to the respondent no.1. The order passed by the Lower Appellate Court is erroneous, hence requested to allow the writ petitions.

8. It is contention of the learned counsel for respondent no.1 that at present respondent no.1 is staying with her parents. When she was staying with the petitioners, she was subjected to mental and physical harassment by the petitioners. Though the petitioners have been acquitted from the offence under section 498-A of the Indian Penal Code, it can not be a ground to deny the compensation under the D.V. Act. The Trial Court and Lower Appellate Court have considered these facts and on that basis the compensation is awarded, which is proper. No interference is required in it, hence requested to dismiss the writ petitions.

9. I have heard all the learned counsel. Perused the judgment and order passed by the Lower Appellate Court.

10. Admittedly all the petitioners were living together. Their family is joint family. After marriage, the respondent no.1 was living in joint family. It is alleged that while she was staying there she was subjected to domestic violence by the petitioners. To prove her case respondent

no.1 has examined herself at Exhibit-31 and also examined witness Sanjivkumar Kalantri at Exhibit-52. The husband of respondent no.1 has examined himself in support of his case. From the evidence of these witnesses it appears that when respondent no.1 was staying with the petitioners' family, she was subjected to mental and physical harassment by the petitioners. Medical certificate at Exhibit-42 issued by the Medical Officer Pachora Hospital show that the respondent no.1 was treated in hospital and she had swelling and congestion lower limb along with broken tooth. In this certificate it is mentioned that the said injuries caused due to assault by one of the petitioner that is husband of the respondent no.1. All the petitioners and respondent no.1 were living together.

11. It is contention of the learned counsel for the petitioners that as per section 22 of the D.V. Act compensation should be given for damages for the injuries. The section 22 of the D.V. Act reads as under:-

“22. In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress caused by the acts of domestic violence committed by that respondent.”

12. This section provides damages be given to injuries including

mental torture and emotional distress. In the present case, the respondent no.1 has categorically stated that she was subjected to mental and physical cruelty by the petitioners. It has come on record that the husband of respondent no.1 had tried to commit suicide due to quarrel with other petitioners. Though the petitioners are stating that due to *inter-se* quarrel he had tried to commit suicide but being the wife, respondent no.1 must have suffered trauma of the said incident. So it amounts to mental torture and emotional distress. I do not see merit in the contentions of the learned counsel for petitioners that as per section 22 of the D.V. Act, compensation can be given to damages for the injuries only. In my view the expression domestic violence includes actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. The scar of injury can appear on human body but scar's of mental torture and emotional distress remain in mind of that person and these scar's are invisible so it can not be said that aggrieved person is not entitled for compensation.

13. It is contention of the learned counsel for the petitioners that the allegations under D.V. Act and under section 498-A of I.P.C. are same. The petitioners have been acquitted from the charges levelled under section 498-A of the I.P.C. so the petitioners are not entitled to pay compensation. It appears from the record that after passing order in D.V. proceeding the petitioners have been acquitted from the charges levelled under section 498-A of I.P.C. In my view, section 498-A was

added in I.P.C. with a view to punish a husband and his relatives who harass or torture the wife to satisfy unlawful demands, when a woman is subjected to cruelty by her husband or relatives. The legislatures intent is clear to enact a D.V. Act keeping in view the rights guaranteed under Article 14, 15 and 21 of the Constitution of India to provide for a remedy under the Civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. Though the petitioners have been acquitted from the charges under section 498-A, it can not be a ground to deny the compensation to the aggrieved person under Civil law.

14. It is contention of the learned counsel for the petitioners that the compensation of Rs.5,00,000/- awarded is on a higher side. The Lower Appellate Court has observed that the petitioner – husband of respondent no.1 runs various agencies and financial position of the petitioners is sound. Moreover, the trial Court has awarded Rs.5,00,000/- in the year 2013 and out of the said amount, amount of Rs.50,000/- has been deposited by the petitioners. The value of Rs.5,00,000/- in the year 2013 and in year 2024 is certainly reduced. The petitioners have capacity to pay this amount. Considering above reasons, I do not find merit in the petitions and I pass the following order :-

ORDER

(i) Both writ petitions are dismissed.

(ii) The petitioners shall deposit the remaining amount of Rs.4,50,000/- in D.V. Recovery Application No.4 of 2021 pending before the Judicial Magistrate, First Class, Muktainagar within two weeks from the receipt of this order.

(iii) In view of the disposal of the writ petitions, nothing survives in Criminal Application Nos.2375 of 2016 and 2376 of 2016, the same stand disposed of.

[SHIVKUMAR DIGE, J.]

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