

PRAKASH NAGARDAS DUBAL SHAHA

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v.

SOU. MEENA PRAKASH DUBAL SHAH & ORS.

(Criminal Appeal No. 320 of 2016)

APRIL 22, 2016

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[DIPAK MISRA AND SHIVA KIRTI SINGH, JJ.]

Protection of Women from Domestic Violence Act, 2005: ss.12, 18 to 22 – Application for maintenance filed by respondent-wife against the appellant-husband – Sessions Judge held that since the parties had initiated divorce proceedings at an earlier point of time, the Act which came into force only later in 2005 was wrongly invoked by the wife and her application was not maintainable – Held: In the instant case, the divorce proceedings had not resulted in divorce – The unsuccessful divorce proceedings cannot adversely affect the maintainability of application filed by the contesting respondents under the Act – High Court was right in holding that the wife was entitled to seek maintenance.

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Dismissing the appeal, the Court

HELD: 1. The Sessions judge had held that since the husband and wife had initiated divorce proceedings at an earlier point of time, the Protection of women from Domestic Violence Act, 2005 which came into force only later in 2005 was wrongly invoked by the wife and her application was not maintainable. The reasoning of Sessions court was not accepted by the High Court which has noted the fact that the divorce proceedings did not result in the divorce and hence the marital relationship continued and in view of second marriage by the husband, cruelty on the wife stood established and that such act would constitute mental domestic violence and hence wife was entitled to seek maintenance. The unsuccessful divorce proceedings cannot adversely affect the maintainability of application filed by the contesting respondents under the Act. Even on merits of other issues the views taken by the Magistrate are cogent and supported by relevant materials. Hence the High Court rightly interfered with the order of the Sessions Court and confirmed that of the Magistrate. [Paras 5, 6] [972-B-C, E]

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A **CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 320 of 2016.**

From the Judgment and Order dated 24.01.2013 of the High Court of Judicature at Bombay in Criminal Revision Petition No. 79 of 2012.

B Abdulrahiman T., Rahul, M. A. Krishna Moorthy, Advs. for the Appellant.

Aniruddha P. Mayee, A. Selvin Raja, Sanjay Kumar Visen, Advs. for the Respondents.

The Judgment of the Court was delivered by

C **SHIVA KIRTI SINGH, J.** 1. By the impugned judgment and order dated 24.1.2013 the learned Single Judge of High Court of Judicature at Bombay has allowed Criminal Revision Petition No. 79 of 2012 preferred by the respondents by reversing order of learned Sessions Court and restoring that of learned Judicial Magistrate First Class, Miraj
D passed in Criminal Miscellaneous Application No. 147/2011.

2. The facts relevant for adjudication of relevant issue arising in this appeal lie within a narrow compass. Respondent no. 1 is wife of appellant, respondent no. 2 is unmarried daughter and respondent no. 3 is minor son born out of marriage between the appellant and respondent
E no. 1. The aforesaid three contesting respondents initiated the present proceedings before the learned Magistrate by preferring an application under Sections 12, 18, 19, 20, 21 and 22 of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the Act"). Learned Magistrate noticed the case of rival parties including undisputed
F facts such as solemnization of the marriage on 27.3.1986 as per Hindu rites. It is the case of contesting respondents/applicants that the appellant has qualification of D. Pharmacy and has a shop named Vijay Medical situated at a favourable location. Since the wife is handicapped by right
G leg, not only the husband made uncharitable remarks and meted out ill treatment but also neglected her by regularly coming to home late. He also made demands for money which the parents of the wife met from time to time. He defaulted in payment of instalments of a flat situated at
H Grimar Complex, in the year 2001 and when the concerned bank wanted to seize that property wife's relation came to their help and paid the loan on transfer of the property in the name of the wife. The wife has alleged

that the appellant had a girlfriend whom he subsequently married and from that marriage also he has a son. It is also her case that due to mental and physical abuse, she agreed to file an application for divorce by mutual consent but the appellant did not fulfill the agreed term of paying her Rs. 5,00,000/- as alimony. Hence the application for divorce ultimately got dismissed. The wife claimed for maintenance for herself and children on the ground that the appellant is living with the second wife and although he is earning Rs. 40,000/- from the shop, he is not paying anything towards their maintenance. She claimed Rs. 10,000/- per month as maintenance for herself and same amount for each of her children and also a compensation of Rs. 50,00,000/-.

3. The appellant denied all the allegations. He claimed that he has stopped running his medicine shop and rented it out to another person. He alleged that his wife had negative attitude and therefore she had made his life miserable. He also denied the second marriage and claimed that after the flat was transferred in the name of the wife he was driven out and therefore he is living separately. According to him the wife is capable of maintaining herself and children and the application was filed only to harass him.

4. After considering the case of both the parties and the materials produced by them, the learned Magistrate held that the application filed by the wife was maintainable and she was eligible to claim remedy under the Act because after the rejection of divorce petition, she remained a lawfully wedded wife of appellant. He also held that appellant committed act of domestic violence. The defence of the appellant that he has rented out shop for a meagre amount of Rs 3,000/- to one Rajashri Patil was rejected. The learned Magistrate considered the birth certificate of son of the appellant from the alleged second wife as well as the related circumstances and came to a finding that appellant had performed second marriage, was living with the other woman and was therefore guilty of domestic violence. Ultimately, by way of maintenance the learned Magistrate fixed Rs. 5,000/- per month for the wife, same amount for the daughter and Rs. 4,000/- for the minor son. Some education cost was also allowed in favour of two children from the date of final disposal of the case but maintenance was allowed from the date of filing of the application.

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A 5. The appellant preferred Criminal Appeal No. 335 of 2011 before
the Additional Sessions Judge, Sangli who allowed the same by order
dated 13.1.2012 mainly on the ground that since the husband wife had
initiated divorce proceedings at an earlier point of time, the Protection of
Women from Domestic Violence Act which came into force only later
B in 2005 was wrongly invoked by the wife and her application was not
maintainable. This reasoning of the Sessions Court was not accepted by
the High Court which has noted the fact that the divorce proceeding did
not result in divorce and hence the marital relationship continued and in
view of second marriage by the husband, cruelty on the wife stood
C established. Such act would constitute mental domestic violence and
hence the wife was entitled to seek maintenance.

 6. Having given anxious consideration to the relevant facts and
materials and on careful perusal of orders passed by learned Magistrate,
Sessions Court and the High Court and appreciating those orders in the
D light of the submissions advanced before us, we have no hesitation in
affirming the views of the High Court. The unsuccessful divorce
proceedings cannot adversely affect the maintainability of application
filed by the contesting respondents under the Act. Even on merits of
other issues the views taken by the learned Magistrate are cogent and
E supported by relevant materials. Hence the High Court rightly interfered
with the order of the Sessions Court and confirmed that of the learned
Magistrate. We therefore find no good reasons to interfere. The appeal
is therefore dismissed.

Devika Gujral

Appeal dismissed.