IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 286 OF 2018

1. Atmaram S/o Narayan Sanap,
Age 46 years, Occ. Service,
R/o Tandalwadi (Bhilla),
Tq. Beed, Dist. Beed.
Presently residing at -
Janai Nivas, House No.2362,
Narsimh Colony, Chakradhar Nagar,
Shahu Nagar, Pangri road, Beed,
Tq. & Dist. Beed. … **APPLICANT**
(Original Non applicant No.1)

Versus

1. Sangita W/o Atmaram Sanap,
Age 40 years, Occu. Household,
R/o Tandalwadi (Bhilla),
Tq. & Dist. Beed.

2. Kalpana D/o Atmaram Sanap,
Age 22 years, Occ. Education,
R/o. - As above.

3. Taniksha D/o Atmaram Sanap,
Age 16 years, Occ. Education,
R/o. - As above.
Minor under Guardianship of
Respondent no.1. … **RESPONDENTS**
(Original Applicant Nos. 1 to 3)

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Advocate for Applicant : Mr. C.V. Dharurkar.
Advocate for Respondents : Mr. Sudarshan J. Salunke.

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CORAM : MANGESH S. PATIL, J.
RESERVED ON: 26.09.2019
PRONOUNCED ON: 05.11.2019

JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned advocate for the Respondents waives service. At the request of both the sides the matter is heard finally at the stage of admission.

2. The Applicant was married to the respondent no.1 on 15.05.1993 and the couple was blessed with Respondent nos. 2 and 3 daughters out of the wedlock. He is impugning the concurrent findings in the judgment and order passed by the Magistrate in a proceeding initiated by the Respondent no.1 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as to the 'D.V. Act') dated 02.11.2017 and the one passed by the learned Sessions Judge in the appeal preferred by him whereby the Sessions Judge dismissed it by the judgment and order dated 17.10.2018.

3. Shorn of verbiage the averments of the Respondent no.1 in her complaint under Section 12 of the D.V. Act are to the effect that since after the marriage on 15.05.1993 she started cohabiting with the Applicant in his house at Tandalwadi (Bhilla) Taluka and District Beed. Since the marriage itself he subjected her to physical and mental abuse by declaring that he wanted to marry with an educated girl but had to marry her who was illiterate. Some how she continued to pull on. She then alleged that he played a fraud by deceiving her to get an admission to D.Ed. course by showing her to be a

divorcee and compelled her to obtain a divorce in Hindu Marriage Petition No.66 of 2000. He compelled her to give consent for such divorce by threatening her to desert her and the daughters. He promised her that the decree would only be a paper decree and obtained a decree for divorce on 20.10.2000. She further averred that in spite of passing of such a decree for divorce she continued to cohabit with him in the same household as husband and wife along with their daughters and stayed there for a period of ten long years.

4. She further averred that in April 2010 he solemnized marriage with one Sheetal Niwas Bade and brought her home. He declared that since there was a divorce there was no relation between her and him and threatened her of dire consequences if she objected. Since thereafter the second wife has been cohabiting with them in the same house. She then alleged that on 22.08.2010 she was abused, beaten and driven out from the house. She approached police and a Non Cognizable Case No.226 of 2010 was registered. Annoyed by it he again assaulted her on 24.11.2010 therefore she again approached police and another Non Cognizable Case No.361of 2010 was registered. A similar episode occurred again on 15.10.2011 and another Non Cognizable Case No.331 of 2011 was registered. She then alleged that even on the date of that complaint she was cohabiting in the same household with their

daughters. She was subjected to physical torture. She is not being provided for her maintenance. He is also not providing for the education and other daily expenses of the daughters and persistently insisted her to leave the company.

5. She then alleged that he is serving as a lecturer in a college and was earning Rs. 27,000/- and odd. Besides he has agricultural land and was earning handsomely. He also derives income from rent.

6. Lastly she averred that she has also filed Regular Civil Suit No.342 of 2011 on 08.08.2011 seeking declaration that the decree for divorce was null and void and has also filed a police complaint for the offences punishable under Section 498-A, 494, 420, 504, 323 read with Section 34 of the Indian Penal Code. Accordingly she claimed various reliefs under the D.V. Act.

7. The Applicant contested that proceeding by filing his written statement. He admitted to have solemnized marriage with the Respondent no.1 and even admitted paternity of both the girls. He denied to have ever subjected her to any domestic violence or to have driven out of his house. He contended that after the birth of first daughter she started frequently quarreling with him and on her own left his company in the year 1997. Attempts were made to resume conjugal rights during the period 1997 to June

2000. But even during that period she never cohabited at a stretch for more then a month and half. He then admitted to have obtained a decree for divorce but has denied to have engineered it by practising any fraud. He contended that since she was not ready to resume cohabitation he had no other option but to file the proceeding for divorce on the ground of desertion. They entered into a settlement. As per the terms of the settlement she agreed to receive Rs.30,000/- by way of permanent alimony and even as a part of the compromise an agricultural land was purchased in her name. Having accepted such terms of settlement after due verification the decree was passed by the learned Judge which reached finality and brought about severance of marital ties once for all. Since thereafter she never resumed cohabitation. Annoyed by he having solemnized second marriage, after a lapse of ten long years since the decree for divorce was passed, she has filed concocted proceedings and has also filed false and bogus complaint.

8. He admitted that he has been serving as a lecturer but contended that he was still maintaining the daughters. The first daughter is cohabiting with him and even he is spending for the education and livelihood of the second daughter. Thus he prayed to dismiss the complaint.

9. After giving an opportunity to lead evidence to both the sides and having heard them finally, by the impugned judgment and order the learned

Magistrate held that the Respondent no.1 was still having domestic relations with the Applicant. There was enough evidence to conclude that she was subjected to domestic violence and even though there was a dispute regarding divorce pending before the Civil Court, she was entitled to claim maintenance and accordingly directed him to pay to the Respondent nos. 1 and 3 Rs. 7,500/- per month and Rs.5,000/- per month respectively from the date of the application. The Magistrate also directed him to pay to the Respondent no.1 Rs.1,00,000/- as compensation and Rs.2,000/- as costs. He also directed him not to subject her to any domestic violence. However holding that the first daughter was residing with him, the proceeding to her extent was dismissed.

10. He preferred appeal under Section 29 of the D.V. Act but the learned Sessions Judge concurred with the observations and the conclusions drawn by the Magistrate and dismissed the appeal. Hence this Revision.

11. The learned advocate for the Applicant submitted that there is admittedly a decree for divorce which has reached finality. It is after a long lapse of ten years that the Respondent no.1 has preferred to impugn such a decree by filing a suit in the year 2010. So long as it is not quashed and set aside, it has the sanctity of law as held in the case of **Inderjit Singh Grewal Vs/ State of Punjab and Another; 2012 CRI. L.J. 309**. The learned advocate also submitted that in view of the observations of the Supreme Court, the facts in

that case being similar to the one in the matter in hand, the Courts below ought not to have bypassed the observations and the conclusions and should have dismissed the complaint. The decision was cited before both the Courts below and they have not given sound reasons to bypass it. The learned advocate would then submit that both the Courts below have failed to consider that the decree for divorce was obtained by way of a compromise and ought not to have been easily circumvented.

12. The learned advocate for the Applicant also submitted that both the Courts below have not appreciated the facts and evidence in the proper perspective and have reached a perverse and arbitrary conclusion simply on the basis of the fact that the second daughter was born after the decree for divorce was obtained, to conclude that in spite of decree of divorce the couple had continued to cohabit as husband and wife. Both the Courts failed to appreciate the fact that the second daughter was born barely three and half months after the divorce and it was just possible that the Respondent no.1 was pregnant at the time of divorce. The Applicant never disputed the paternity of the second daughter and at the most it could be said that the couple had access to each other when the second daughter could have been conceived which could be the time up to June 2000. The learned advocate thereafter sought to place reliance on the judgment of this Court in the case of **Jayesh Uttamrao**

Khairnar and Others Vs. State of Maharashtra and Others; 2013 (3) Mh.L.J. 305, **Kishor Shrirampant Kale Vs. Sou. Shalini Kishor Kale and Others; 2010 CRI. L.J. 4049** and an unreported decision of a coordinate bench of this Court (Nagpur bench) in **Smt. Sadhana w/o Hemant Walwatkar Vs. Hemant s/o Shalikramji Walwatkar** in Criminal Revision Application (Revn.) No.121 of 2018 **dated 18.04.2019**.

13. The learned advocate for the Respondents vehemently submitted that there was ample evidence before both the Courts below demonstrating that in spite of a decree for divorce, the couple had cohabited together as husband and wife for a considerable period of time. There was ample evidence to show that the decree for divorce was obtained to enable the Respondent no.1 to take admission to D.Ed. course under a category which provided for special seat to a divorcee women. The learned advocate would further submit that even assuming for the sake of arguments that there was such a divorce, still, as has been held by the Supreme Court in the case of **Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori and Another; (2014) 10 Supreme Court Cases 736**, even if it is assumed that the Respondent no.1 is a divorcee, she is entitled to file a proceeding under Section 12 of the D.V. Act in respect of a past domestic violence. The learned advocate would further point out that in this decision the Supreme Court has distinguished the earlier

decision in the case of **Inderjit Singh Grewal** (supra). The two Courts below have rightly appreciated such legal scenario and have rightly held the Respondent no.1 to be entitled to file a proceeding under Section 12 of the D.V. Act. The learned advocate also cited decisions of various High Courts rendered relying upon the decision in the case of **Juveria Abdul Majid Patni** (supra).

14. I have carefully gone through the record and the proceeding and the judgments of the two Courts below. Needless to state that since there are concurrent findings of the two Courts below, this Court should be circumspect in invoking the revisional powers under Section 397 read with Section 401 of the Code of Criminal Procedure. It is only if the decisions rendered by the two Courts below can be said to be either perverse, arbitrary or capricious that this Court can invoke such powers.

15. As can be appreciated the whole controversy revolves around the fact as to what is the consequence of the decree of divorce in the peculiar facts and circumstances of the matter in hand.

16. As has been laid down in the case of **Inderjit Singh Grewal** (supra) when the decree for divorce has been challenged by the Respondent no.1 by filing a civil suit wherein she is alleging that it was obtained by fraud or misrepresentation, so long as the decree for divorce is not quashed and set

aside or declared as null and void in that civil proceeding, both the Courts below and even this Court cannot overlook the decree of divorce. It has been specifically observed in the case of **Inderjit Singh Grewal** (supra) that even if such a decree is *non est* or null and void it will have to be so declared by the competent Civil Court and would not lose its efficacy till then. Since admittedly a civil suit filed by the Respondent no.1 has not yet reached finality, one can only proceed on the premise that there is a decree of divorce between the Applicant and the Respondent no.1.

17. However, in the case of **Juveria Abdul Majid Patni**(supra), the decision in the case of **Inderjit Singh Grewal** (supra) has been distinguished with following observations in paragraph no. 28:

> *"28. In Inderjit Singh Grewal the appellant Inderjit Singh and Respondent 2 of the said case got married on 23-9-1998. The parties to the marriage could not pull on well together and decided to get divorce and, therefore, filed a case for divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955. After recording the statement in the said case, the proceedings were adjourned for a period of more than six months to enable them to ponder over the issue. The parties again appeared before the Court on second motion and on the basis of their statement, the District Judge, Ludhiana vide judgment and order dated 20-3-2008 allowed the petition and dissolved their marriage. After dissolution of marriage the wife filed a complaint before the Senior Superintendent of Police, Ludhiana against Inderjit Singh under the provisions of the Domestic Violence Act alleging that the decree of divorce obtained by them was a sham transaction. It was further alleged that even after getting divorce both of them had been living together as husband and wife. In the said*

> *case, the Superintendent of Police, City I conducted the full-fledged inquiry and reported that the parties had been living separately after the dissolution of the marriage. Hence, no case was made out against Inderjit Singh. In this context, this Court held that Section 12 "application to Magistrate" under the Domestic Violence Act challenging the said divorce was not maintainable and in the interest of justice and to stop the abuse of process of court, the petition under Section 482 Cr.PC was allowed. The law laid down in the said case is not applicable for the purpose of determination of the present case."*

18. As can be noticed, even in the matter of **Inderjit Singh Grewal** (supra), there was a divorce by mutual consent under Section 13 (b) of the Hindu Marriage Act, 1955. A first motion was made and the matter was adjourned for statutory period of six months to enable the parties to reflect. A second motion was made after the lapse of six months and it is thereafter that a judgment and order dissolving the marriage was passed. It is thereafter that the wife had filed a complaint with the Superintendent of Police complaining of domestic violence alleging that the decree of divorce was a sham transaction and in spite of such a decree the couple was living together as husband and wife. The Superintendent of Police conducted a full-fledged inquiry and had reported that the parties were living separately since after dissolution of marriage and in that context the Supreme Court held that the wife was not entitled to file any application to the Magistrate under Section 12 of the D. V. Act and that the proceeding was rightly quashed by invoking the powers under Section 482 of the Code of Criminal Procedure.

19. In the matter in hand the situation is not exactly similar to the one that was obtaining before the Supreme Court in the case of **Inderjit Singh Grewal** (supra). Both the Courts below have discussed the evidence and have objectively scanned it and have demonstrated as to how *prima facie* the decree of divorce was not acted upon and the couple i.e. Applicant and the respondent no.1 had continued to cohabit in the same abode in spite of such a decree.

20. True it is that while appreciating these circumstances, both the Courts below have given importance to the birth of the second child after the decree of divorce was passed and in doing so have jumped to a conclusion that this circumstance alone was sufficient to demonstrate that in spite of decree of divorce the couple had continued to cohabit as husband and wife. However, the learned Magistrate and the learned Sessions Judge failed to appreciate the fact that the second daughter was born on 03.02.2001 i.e. barely three to four months of the date of dissolution of marriage i.e. 20.10.2000. They failed to consider the fact that even according to the Applicant, the respondent no.1 was cohabiting with him till June 2000 and if that was the case, the second daughter could have been conceived till June 2000. He is not disputing her paternity and therefore, it cannot be said that she was convicted after the decree of divorce was passed.

21. Be that as it may, there was ample evidence before the two Courts below to come to a plausible conclusion that though the decree of divorce was obtained in the year 2000, the Applicant and the Respondent no.1 had continued to cohabit in the same household. If that was the case, she was indeed entitled to file a proceeding under Section 12 of the D.V. Act.

22. Besides, assuming for the sake of arguments that the marriage stood dissolved by the decree of divorce, still, as has been held in the case of **Juveria Abdul Majid Patni** (supra), she would be entitled to file a proceeding under Section 12 of the D.V. Act in respect of the past domestic violence. The following observations from paragraph no. 30 are relevant:

> *"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."*

23. In view of such observations, no fault can be found in the decision of the two Courts below in relying upon these observations and holding that the proceeding initiated by the Respondent no.1 was maintainable.

24. So far as decision of coordinate benches of this Court in the case

of **Jayesh Uttamrao Khairnar** (supra) and **Kishor Shrirampant Kale** (supra) are concerned, obviously the decisions were rendered prior to the decision in the case of **Juveria Abdul Majid Patni** (supra). Besides the facts and circumstances obtaining in those matters are clearly distinguishable from the facts of the present case.

25. So far as the decision in the case of **Smt. Sadhana w/o Hemant Walwatkar** (supra) is concerned, it seems to be *per incuriam* in as much as the decision in the case of **Juveria Abdul Majid Patni** (supra) has been refused to be followed when it clearly distinguishes the decision in the case of **Inderjit Singh Grewal** (supra). Rather it has been erroneously observed that the decision in the case of **Juveria Abdul Majid Patni** (supra) was considered by the Supreme Court in the case of **Inderjit Singh Grewal** (supra), when factually it could not have been since the decision in the case of **Juveria Abdul Majid Patni** (supra) was later in point of time. Therefore the Applicant is not entitled to derive any benefit from the decisions of this Court in the case of Jayesh Uttamrao Khairnar, Smt. Sadhana w/o Hemant Walwatkar and Kishor Shrirampant Kale (supra).

26. Having concluded that the two Courts below have rightly come to a conclusion about entitlement of the Respondent no.1 to file a proceeding under Section 12 of the D.V. Act, the question of the reliefs to which she is

entitled to remain to be considered. As is demonstrated by the two Courts below, the Applicant in his cross-examination has specifically admitted that he earns a salary of Rs.46,000/- per month and also owns agricultural land. He also admitted that the second daughter has been residing with the Respondent no.1. He then admitted that till the year 2010 even the first daughter was residing with the Respondent no.1 and it is only thereafter that the first daughter started cohabiting with him. He was unable to produce any receipts about having spent for the education of the second daughter and also admitted not to have provided for maintenance of the Respondent no.1. Both the Courts below having considered such evidence have decided the quantum of maintenance and the compensation. I find no sufficient and cogent reason to interfere even in respect of the quantum. There is no substance in the revision and it is liable to be dismissed.

27. The Revision is dismissed. The Rule is discharged.

[MANGESH S. PATIL, J.]

KAKADE