

Meena

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.84 OF 2023**

1. Smt. Reena C. Naik ...Applicant.
Aged 45 years, Indian National, Married,
Temporary Resident of Flat No.402, Shetye
Plaza, Upper Bazar, Ponda, Goa- 403401.
W/o. Chandan Naik, aged 45 years, R/o. 507
Haldai, Shiroda, Ponda, Goa – 403 106.

V/s.

- 1 Mrs. Swayangeeta Rajesh Naik
Aged 51 years, Indian National, Married,
W/o. Rajesh Naik, R/o. 507, Haldai, Shiroda,
Ponda, Goa- 403106.
- 2 Mr. Rajesh Naik
Aged 54 years, Indian National, Married,
S/o. Late Mahadev Naik, R/o. 507, Haldai,
Shiroda, Ponda, Goa- 403106.
- 3 Mr. Chandan M. Naik
Aged 48 years, Indian National, Married,
S/o. Late Mahadev Naik, R/o. 507, Haldai,
Shiroda, Ponda, Goa- 403106. ...Respondents

Mr. Parag Rao with Mr. Ajay Menon, Advocates for the Petitioner.

Mr. Hrudaynath S. Shirodkar, Advocate for Respondent Nos. 1 and 2.

Mr. Arjun Naik, Advocate for Respondent No.3.

CORAM: BHARAT P. DESHPANDE, J

DATED: 23rd January, 2024

ORAL JUDGMENT:

1. Rule. Rule is made returnable forthwith.

2. Heard learned Counsel for the parties at the admission stage with consent for disposal since a very limited issue is involved in the present proceedings.

3. Mr. Rao appearing for the petitioner would submit that the learned trial Court granted the application under Domestic Violence Act vide its order dated 17/11/2022, in part and refused the prayer for shared household. The petitioner then filed an appeal before the Appellate Authority vide Criminal Appeal No.176 of 2022. Mr. Rao would submit that such criminal appeal was rejected only by placing reliance on the judgment of **S.R. Batra and another v/s. Taruna Batra** [(2007) 3 SCC 169].

4. Mr.Rao would submit that the ratio laid down in **S.R. Batra**(supra) was considered by the Supreme Court a three Judge Bench in case of **Satish Chander Ahuja v/s. Sneha Ahuja** [(2021) 1 SCC 414]. The Apex Court overruled the observations in the case of **S.R. Batra**(supra) specifically with regard to the interpretation of shared household as defined under Section 2(s) of the Protection of Women from Domestic Violence Act, 2005.

5. Mr. Rao further submits that in the decision in the case of **Prabha Tyagi v/s. Kamlesh Devi** [(2022) 8 SCC 90], the Apex Court discussed the expression “joint family” and shared household.

6. He submits that the learned First Appellate Court by relying upon a overruled judgment, dismissed the appeal.

7. The learned Counsel Mr. Arjun Naik appearing for respondent No.3 submits that the First Appellate Court's order is entirely based on the observations in the case of **S.R. Batra**(supra).

8. The decision in the case of **Satish Chander Ahuja**(supra) and more specifically paragraphs 69 and 70 are material which reads thus:

"64. In paragraph 29 of the judgment, this Court in S.R. Batra Vs. Taruna Batra (supra) held that wife is only entitled to claim a right to residence in a shared household and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The definition of shared household as noticed in Section 2(s) does not indicate that a shared household shall be one which belongs to or taken on rent by the husband. We have noticed the definition of "respondent" under the Act. The respondent in a proceeding under Domestic Violence Act can be any relative of the husband. In event, the shared household belongs to any relative of the husband with whom in a domestic relationship the woman has lived, the conditions mentioned in Section 2(s) are satisfied and the said house will become a shared household.

70. We are of the view that this court in S.R. Batra Vs. Taruna Batra (supra) although noticed the definition of shared household as given in Section 2(s) but did not advert to different parts of the definition which makes it clear that for a shared household there is no such requirement that the house may be owned singly or jointly by the husband or taken on rent by the husband. The observation of this Court in S.R. Batra Vs. Taruna Batra (supra) that definition of shared household in Section 2(s) is not very happily worded

*and it has to be interpreted, which is sensible and does not lead to chaos in the society also does not commend us. The definition of shared household is clear and exhaustive definition as observed by us. The object and purpose of the Act was to grant a right to aggrieved person, a woman of residence in shared household. The interpretation which is put by this Court in S.R. Batra Vs. Taruna Batra (*supra*) if accepted shall clearly frustrate the object and purpose of the Act. We, thus, are of the opinion that the interpretation of definition of shared household as put by this Court in S.R. Batra Vs. Taruna Batra (*supra*) is not correct interpretation and the said judgment does not lay down the correct law.”*

9. Since the impugned order passed by the First Appellate Court is basically relying upon an overruled decision, the matter needs to be remanded by quashing and setting aside the impugned order and by giving opportunity to the parties to argue the matter afresh and by placing reliance on the decision of **Satish Chander Ahuja** and **Prabha Tyagi**(*supra*).

10. The First Appellate Court shall consider such submissions and decisions and decide the appeal afresh.

11. It is made clear that this Court has not gone into the merits of the matter. All contentions of parties are kept open. It is needless to mention that since the matter is with regard to domestic violence and the prayer is for shared household, the learned First Appellate Court shall consider the matter to be taken up as expeditiously as possible and preferably within a period of two months to decide the said appeal, from the date of copy of this order is placed before it.

12. Mr. Rao would submit that even though the learned Magistrate passed an order for grant of interim maintenance arrears till date are not deposited.

13. The petitioner is free to move the First Appellate Court for recovery of such arrears. The First Appellate Court shall also consider the contentions raised with regard to non payment of the maintenance charges. Mr. Naik submits that respondent No.3 has already moved an application for modification of maintenance amount. The concerned Court shall decide such application as expeditiously as possible.

14. In view of the above observations, the impugned order is hereby quashed and set aside. Criminal Appeal No.176 of 2022 is restored to the file of learned Additional Sessions Judge who shall decide the said appeal preferably within a period of two months.

15. Parties shall appear before the First Appellate Court on 31/01/2024 at 10.00am and place the copy of this order. The First Appellate Court shall thereafter hear the parties by fixing a suitable date and decide the appeal within a period of two months.

16. The petitioner's right to recover the arrears as well as maintenance granted by the learned JMFC is kept open by filing necessary proceedings.

17. The parties shall act on the authenticated copy of this order.

BHARAT P. DESHPANDE, J