

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 492 OF 2015

Hanumant s/o. Laxman Hendre

....Petitioner.

Versus

State of Maharashtra and Ors.

....Respondents.

Mr. S.B. Choudhari, Advocate for petitioner.

Mr. U.H. Bhogle, APP for State.

Mr. S.K. Doke, Advocate for respondent No. 2.

CORAM : T.V. NALAWADE, J.

DATED : 15th July, 2015.

ORDER :

1. The petition is filed to challenge the judgment and order of Misc. Application No. 141/2012 which was pending in the Court of Judicial Magistrate, First Class, Paranda and the also the decision of Criminal Appeal No. 64/2013 which was pending in the Court of Additional Sessions Judge, Bhoom, District Osmanabad. Both the sides are heard.

2. The proceeding bearing Misc. Application No. 141/2012 was filed under the provisions of Protection of Women From Domestic Violence Act (hereinafter referred to as the 'Act' for short) and in that proceeding, the maintenance at the rate of

Rs. 1000/- each was granted in favour of wife and daughter of the present petitioner. The relief in respect of the residence is also granted and direction is given to the present petitioner to provide two rooms to wife and daughter at Indapur.

3. Today submission was made by both the sides that they have agreed to see that three rooms are given to the wife and daughter at Baramati and to that extent, they themselves will be settling the dispute. Thus, the relief granted in respect of residence is not under challenge in the present proceeding.

4. The learned counsel for petitioner submitted that on one hand, the present respondents are getting maintenance under section 125 of Cr.P.C. and on the other hand, they are trying to get the maintenance in a proceeding filed under the aforesaid Special Act. He drew the attention of this Court to some proceedings filed under section 125 and 127 of Cr.P.C. The proceedings show that from time to time the maintenance came to be enhanced and lastly in Criminal Misc. Application No. 65/2014 the maintenance came to be enhanced to make it Rs. 4000/- per month to wife and Rs. 2500/- per month to daughter. Thus, if the maintenance granted under the present proceeding is considered, the present petitioner will be required to pay Rs.

8500/- per month by way of maintenance.

5. The judgment delivered by the Courts below in a proceeding filed under section 127 of Cr.P.C. and also the proceeding filed under the aforesaid special Act show that the orders made in other proceedings are considered by the Court. In last proceeding filed for enhancement of maintenance under section 127 of Cr.P.C., the salary certificate was produced which was to the effect that gross salary of the petitioner was around Rs. 32,000/-. The submissions made show that the present petitioner is required to maintain his one more son and one daughter, who are from the first wife. The first wife is dead. Thus, for the present respondents, the total amount of Rs. 8500/- is awarded as maintenance under two different proceedings and the remaining amount will be available with the present petitioner for his own maintenance and maintenance of his son and daughter.

6. The learned counsel for the petitioner has a feeling that Sessions Court has observed that one more proceeding can be filed under the provisions of Domestic Violence Act. This Court has carefully gone through the judgment and particularly the observations made in paragraph No. 16. The Sessions Court

has observed that if the circumstances change and the income of the present petitioner is increased, another proceeding can be filed for enhancement of maintenance. Such proceeding can be only under section 127 of Cr.P.C. The purpose behind the Act is altogether different and it can be said that the point of domestic violence, right of residence order and right to get maintenance amount is decided already. Thus, there should not be any fear for the present petitioner to face one more proceeding under the provisions of the Act.

7. Considering the status of the parties and aforesaid circumstances, this Court holds that the original claimants, wife and daughter are entitled to get the aforesaid maintenance allowance granted under the provisions of the Act. The present petitioner has capacity to give such amount and as per the status of the parties, the respondents are entitled to get the amount. This Court sees no reason to interfere in the judgments and orders passed by the learned J.M.F.C. and Sessions Court.

8. In the result, the petition stands dismissed.

9. The statement made by the learned counsel for petitioner that three rooms will be given by the petitioner to the

wife and daughter at Baramati for residence purpose is taken on record as undertaking.

[T.V. NALAWADE, J.]

ssc/