

- ## VERSUS

- CORAM : T. V. NALAWADE &
DATE : 16th July, 2015**

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was pending in the Court of Judicial Magistrate, First Class, Shrirampur. The application was filed under section 12 of the Protection of Women from Domestic Violence Act, 2005. Learned JMFC granted compensation of Rs.50,000/- in respect of domestic violence and this decision is challenged by the original respondents, husband and his relatives.

2. Both sides are heard.

3. It is the case of wife that she was given in marriage on 16.05.1998 and she had cohabited with present petitioner No.1 at many places and there was cohabitation of about 7 years. Petitioner No.1 husband was in military services. It is contended that as she did not conceive even after seven years of marriage, relatives of husband started asking to give divorce to her. It is contended that on that count ill treatment was given and she was assaulted on many occasions. It is contended that no Doctor had given opinion that fault was with her. It is her case that ultimately, she was driven out of matrimonial house on 23.07.2006. It is her case that her ornaments were snatched and taken away and since then she is living with her parents. It is her case that she made many attempts to return to matrimonial house, however the husband refused to take her back and he is insisting that she should give divorce to him.

4. It appears that wife had given application to Administrative Officer, Indian Military for monthly maintenance amount from the salary of petitioner No.1 and an amount equal to 22% of the salary was being given to her. It is her case that she is mentally and physically harassed by the husband and his relatives on aforesaid count and she is entitled to compensation. She had also claimed some amount for rent but that relief is refused by the learned JMFC.

5. The husband and his relatives filed reply and they contested the matter. It is their case that they had spent Rs.60,000/- for giving medical treatment to the applicant and husband had never asked divorce from her. It is the case of the husband that on her own, wife left his house.

6. Before the learned JMFC, wife examined herself. Respondent examined witnesses and some record of making provision for maintenance was produced. No evidence is, however, given to show that there is some fault with the wife and due to that she could not conceive.

Before the JMFC, some record was produced to show that the husband has married second wife and he has two issues from the second wife born in the years 2007 and 2009. No rebuttal evidence was given in respect of the said record which was record of birth

record of the issues.

7. The aforesaid record is sufficient to prove in a proceedings filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 that there was domestic violence due to the reason already given. When the husband made the wife to suffer such ill treatment and violence as she did not conceive and when he married second time and drove out the first wife out of matrimonial house, there is no other alternative than to hold that the first wife must have been subjected to harassment both mentally and physically.

8. In the present proceeding the learned counsel for the wife showed to this Court the record that to avoid making of payment of maintenance, the husband has taken retirement from Army. He showed this Court that he got more than Rs.14 lack and he will be getting sufficient pension. This conduct of the husband also need to be kept in mind. In view of paying capacity of the husband and other circumstances, compensation of Rs.50,000/- is awarded by the learned JMFC. This Court sees no reason to interfere with the order made by the learned JMFC. In the result, the criminal writ petition stands dismissed.

(T. V. NALAWADE, J.)

JPC