

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Criminal Writ Petition No. 48 of 2015

- 1. Venand son of Leeladhar Wanjari,**
aged about 38 years,
occupation service,
- 2. Smt. Kusum wife of Leeladhar Wanjari,**
aged about 59 years,
occupation Household,
- 3. Nandkishore son of Leeladhar Wanjari,**
aged about 35 years,
occupation Labour,
- 4. Lalchand son of Leeladhar Wanjari,**
aged about 28 years,
occupation Labour,
- 5. Smt. Shobha wife of Nandkishore Wanjari,**
aged about 30 years,
occupation household,

nos. 1 to 5 residents of Umathe Nagar,
Ward No.5, Kondhali,
Tq. Katol,
Distt. Nagpur.

- 6. Ajay son of Narayanrao Thombre,**
aged about 39 years,
occupation Labour,
- 7. Smt. Durga wife of Ajayraoji Thombre,**
aged about 32 years,
occupation Household,

Nos. 6 and 7 residents of
Vitthal Nagar,
Manewada Road, Nagpur.

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Petitioners.

Versus

1. **Smt. Jyoti wife of Venand Wanjari,**
aged 33 years,
occupation - Tailor,
2. **Ku. Nikita daughter of Venand Wanjari,**
aged about 11 years,
occupation Student,
3. **Master Chiranjiv son of Venand Wanjari,**
aged about 5 years,
occupation Student,

Nos. 2 and 3 being minor through
natural guardian Mother -
respondent no.1,

all residents of C/o Vikas Nagar,
Kondhali, Tq. Katol,
Distt. Nagpur.

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Respondents.

Mr. V.D. Muley, Adv., for the petitioners.

Mrs. U.A. Patil, Adv., for respondent nos. 1 to 3.

CORAM : V. M. DESHPANDE, J.

Date : 04th Sept.,2015.

ORAL JUDGMENT:

01. Rule. Rule is made returnable forthwith. Learned Adv. Mrs. U.A. Patil waives service for respondent nos.1 to 3. Heard learned counsel for the rival parties. By consent of rival parties, this Criminal Writ Petition is taken up for final hearing and disposed of by this Judgment and Order.

02. The present Writ Petition arises out of the order dated 24th April, 2014 passed by learned Judicial Magistrate First Class, Katol, in Misc. Criminal Application No. 139 of 2013, whereby the learned Magistrate allowed the application for interim maintenance which the respondents have filed along with the main application made under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

03. By the impugned order, the learned Judge of the Court below has directed the present petitioners to pay Rs.2,000/- to each of the respondents. Further, by the same order, the following direction

was given:-

“4. The non-applicant no.1 is hereby restrained from withdrawing any amount from the Joint Account No. 31872277049 with Branch S.B.I. Kondhali till further order.”

04. The learned counsel for the petitioners submitted that the order passed by the learned Magistrate cannot stand to the scrutiny of law, because, though the learned Judge has granted maintenance of Rs. 2,000/-, he has not mentioned whether it has to be per month. Such an argument on behalf of petitioners is totally misconceived. Merely because the words “per month” are not mentioned in the order, it does not mean that the Court cannot read that the order is passed against the petitioners that they should pay maintenance of Rs. 2,000/- per month to each of the respondents.

05. Though the learned counsel has raised a dispute, however, in his fairness, he has stated that it is his duty to pay the maintenance amount to his wife and children.

06. In my view, the submission and the objection raised by the learned counsel for the petitioners in respect of Condition No.4 is just. In my view, learned counsel for the petitioners is right in making a

submission that if there is an injunction restraining him from operating the account as stated in operative part [4], then, it will cause hardship to him and it will not be possible for him to pay amount of maintenance.

07. In my view, therefore, the Condition No.4 as appearing in the operative part of the Order dated 24th April, 2014 cannot stand to the scrutiny of law.

08. The anxiety of both the parties can be taken care of by directing the learned Magistrate to dispose of the main proceedings bearing Misc. Criminal Application No. 139 of 2013 filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005, within a period of three months from the date of receipt of this order. That leads me to pass the following order:-

ORDER

[a] The Condition No.4 in the operative order dated 24th April, 2014 passed by learned Judicial Magistrate First Class, Katol, in Misc. Criminal Application no. 139 of 2013 is set aside.

- [b]** The petitioners shall pay the entire amount of the arrears of maintenance as directed by the Judicial Magistrate First Class, Katol, as per order dated 24th April, 2014, within a period of three weeks from today.
- [c]** With this the Writ Petition is partly allowed and disposed of with no order as to costs.
- [d]** Misc. Criminal Application No. 139 of 2015 should be decided by the Court below within a period of three months from receipt of this order in accordance with law.

Judge

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