

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 137 OF 2016

KAVITA W/O ATUL KHOD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. S.B. Choudhari
APP for Respondent No.1: Mr. N.T. Bhagat
Advocate for Respondents 2 to 7 : Mr. R.S. Deshmukh
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CORAM : V. K. JADHAV, J.
DATED : 27th JULY, 2016

PER COURT:-

1. Heard finally with consent of the parties.
2. Being aggrieved by the judgment and order dated 08.01.2016, passed by the Additional Sessions Judge, Beed, in criminal appeal No. 90 of 2015, the original applicant-wife has filed this writ petition.
3. Brief facts, giving rise to the present writ petition, are as under:-
 - a) The petitioner-original applicant has filed Misc. Criminal application No. 39 of 2014 under Section 12 of Domestic Violence Act against the respondent Nos. 2 to 7-non applicants before learned J.M.F.C. Shirur Kasar. The petitioner-wife has

alleged in the said application that she was treated well for certain period after the marriage and thereafter she was subjected to ill treatment on account of non fulfillment of some unlawful demands by the husband and his family members. Furthermore, the respondent-husband insisting her to give him divorce. Finally, in the month of December, 2012, respondent-husband drove her out of his house and since then the petitioner-wife is residing with her parents. According to the petitioner, she has no independent source of income and she is entirely depending upon her husband. She is unable to maintain herself. It has further contended that respondent-husband is contractor by occupation. In addition to that, he is also doing cable T.V. business. Furthermore, he owns and possesses 15 acres of irrigated land. It has stated that excluding the expenses, the respondent-husband is getting more than Rs.5,00,000/- per annum. The petitioner-wife sought various reliefs such as maintenance, grant of compensation etc.

b) The respondents have strongly resisted the said application by filing their say at Exh.12. They accepted the relationship, however, denied that the petitioner was subjected to ill treatment on account of non fulfillment of unlawful demands. It has stated that the petitioner is arrogant in nature

and she was not doing the domestic work and used to pick up quarrel with the family members. It has also alleged that twice the petitioner had tried to commit suicide. It has also stated that at present the petitioner is earning Rs.100 to Rs.200/- per day by doing tailoring business.

c) The parties led their oral as well as documentary evidence in support of their rival contentions. Learned Magistrate by order dated 11.6.2015 in Misc. criminal application No. 39 of 2014 granted maintenance at the rate of Rs.7000/- p.m. from respondent-husband and granted compensation of Rs.10,000/-. Learned Magistrate has refused to grant other reliefs as claimed by the petitioner-wife in her application.

d) Being aggrieved by the same, the respondent-husband alone has preferred criminal appeal No. 90 of 2015 before the Sessions Court at Beed. After hearing both the parties, the learned Additional Sessions Judge, Beed by its impugned judgment and order dated 08.01.2016, in criminal appeal No. 90 of 2015, partly allowed the said appeal and thereby modified the order passed by the Magistrate and directed the respondent-husband to pay monthly maintenance of Rs.2,000/- to the petitioner-wife from 14.5.2013. Hence, this writ petition.

4. Learned counsel for the petitioner submits that the learned Additional Sessions Judge has not considered the oral as well as documentary evidence in its proper perspectives. The petitioner has deposed before the Magistrate that her husband owns and possesses agriculture land and is also doing the business of contractor-ship. Furthermore, he is also doing cable T.V. business. She has also deposed that her husband owns a grocery shop and he has residential house in Beed city and getting the income by giving rooms on rent. Even the petitioner, in support of her contentions, has produced some record i.e. 7x12 extract, *Namuna* No.8-A etc. which are marked at Exh. 36 to 39 respectively. Even the father of respondent-husband has also admitted in his cross examination that he owns and possesses agriculture land at village Wasanwadi, which is just adjacent to Beed city. Learned Magistrate has correctly observed that only the petitioner-wife can state about the source of income of her husband and respondent-husband is denying his income from the sources, as quoted above. The learned Additional Sessions Judge has wrongly observed in para 4 of judgment that there is no income proof produced by the petitioner-wife. Learned counsel submits that the Additional Sessions Judge has reduced the amount of maintenance from Rs.7000/- to Rs.2000/- without any basis. The petitioner wife is entitled to the same status as of

respondent-husband and his family. Even though the respondent-husband has contended that the petitioner is able to maintain herself as she is earning by doing tailoring work, however, there is no evidence adduced by respondent-husband to substantiate said contention.

5. Learned counsel for the respondent-husband submits that so far as the landed property is concerned, the same is standing in the name of father of respondent-husband and the same is admeasuring 5 acres only. Besides that, there is no evidence to show that the respondent-husband is doing cable T.V. business and also doing the business of contractor-ship. The Additional Sessions Judge, Beed has therefore, rightly reduced the amount of maintenance from Rs.7000/- to Rs.2000/- p.m. with observation that there is no income proof produced on record by either of the parties. Learned counsel submits that no interference is required and this writ petition is liable to be dismissed.

6. It appears from the evidence of father of respondent-husband that he is having agriculture land of more than 5 acres at village Wasanwadi, which is just adjacent to Beed city. Furthermore, father of respondent-husband, has admitted in his cross examination that family owns and possesses one Bungalow in Beed city, which is in

the name of his wife. Thus, considering the admission given by father of respondent-husband in cross examination, it is clear that the respondent-husband need not spend anything on residence and grocery. It is very difficult for the petitioner-wife to collect the documents to show that respondent-husband is doing business of contractor-ship and is also doing the business of cable T.V. However, if the agriculture land is owned by the father of respondent-husband and only father is getting income from agriculture land, then it is difficult to accept that the respondent-husband is not doing anything. it is difficult to understand in what way the learned Additional Sessions Judge has considered the notional income at the rate of Rs.4000/- p.m. of respondent-husband. On the other hand, considering the status of the family and the fact that the respondent-husband need not spend on residence and grocery, whatever the income which he is getting, he is enjoying the same. Thus, considering the evidence on record, it would be just and proper to conclude that the respondent-husband is getting more than Rs.15,000/- p.m. from all sources. The petitioner-wife is the best person to tell about the sources of income of her husband. Considering the status of the family and the facts and circumstances, as discussed above, it would be just and appropriate if the respondent-husband is directed to pay maintenance amount at the rate of Rs.4,500/- (Rupees Four thousand five hundred only).

Hence, the following order:-

O R D E R

- I. Criminal writ petition is hereby partly allowed.
- II. The judgment and order passed by the learned J.M.F.C. Shirur Kasar dated 11.6.2015 in Misc. Criminal Application No. 39 of 2014 (Old 54 of 2013) and the judgment and order dated 08.01.2016 passed by learned Additional Sessions Judge, Beed in criminal appeal No. 90 of 2015 are hereby modified in the following manner:-

“The original respondent No.1 Atul Bhagwat Khod, shall pay monthly maintenance of Rs.4,500/- (Rupees four thousand five hundred only) to original applicant Kavita Atul Khod from 14.5.2013, regularly.”

- III. Rest of the judgment and orders passed by both the courts below, except the quantum of maintenance, stand confirmed.
- IV. Writ petition stands disposed of.

(V. K. JADHAV, J.)