

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 313 OF 2016

HARIHAR S/O YADAVRAO TRIBHUVAN
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioner : Mr Nagarkar Avinash M
APP for Respondent 1 : Mr S G Karlekar
Advocate for Respondent 2 : Mrs Wadmare Sanghmitra

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CORAM : V.K. JADHAV, J.

Dated: August 05, 2016

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PER COURT :-

1. With the consent of learned counsel for respective parties, heard finally.

2. Being aggrieved by the Judgment and Order passed by the learned Additional Sessions Judge, Aurangabad dated 15.1.2016 in Criminal Appeal No.28/2015 the respondent/husband has preferred this Writ Petition.

3. Brief facts, giving rise to the present writ petition, are as follows :-

The original applicant-wife being aggrieved by the Judgment and Order passed by the 2nd Judicial

Magistrate First Class, Aurangabad in Criminal M.A.No.172/2014 dated 10.2.2015 preferred appeal before the Sessions Court, Aurangabad. The original applicant is wife of opponent and their marriage was solemnized prior to 40 years. Out of their wedlock, they are blessed with three daughters and two sons. Their all daughters are married and are staying at their respective matrimonial homes. Their one of the sons namely Ramesh died long back, however, widow of Ramesh alongwith her son is residing with the applicant wife. Their another son Shrimant is also residing with them. The opponent was employed in the B.S.N.L. office as Line Inspector and he retired in August 2013 and getting Pension of Rs.14,000/- p.m. Furthermore, he has also received retiral benefits and he has kept that amount in fixed deposit. The case of the applicant-wife that the opponent is not giving any amount to her by saying that she has no any right in the amount received by him and he will not pay a single pai to her. Even he is not providing any medical aid to the applicant wife. He is not spending any amount on the house hold articles of daily needs in the house. The applicant-wife is

required to face starvation. The opponent is spending his monthly pension in drinking liquor, playing cards, etc. It is also the case of the applicant-wife that, four months prior to the filing of the application, she was driven out of the house. She is, therefore, constrained to file an application for the reliefs u/s 17, 18, 19, 20 and 22 of The Protection of Women from Domestic Violence Act, 2005.

4. The opponent strongly resisted the application by filing his say at Exh.7. He has denied all the allegations made against him. He has admitted the relationship with the applicant, however, denied that the applicant-wife was subjected to ill-treatment as alleged. It has also stated that the applicant-wife is selling vegetables and also doing other petty works. Furthermore, she is also receiving money under the Sanjay Gandhi Yojana. The opponent is also incurring the expenses of medical treatment of both. According to him, the applicant-wife has filed false application at the instance of other persons. Both the parties lead their oral and documentary evidence in respect of their rival

contentions. The learned Judicial Magistrate First class, Court No.2, Aurangabad by its judgment and order dated 10.2.2015 in Criminal M.A.No.174/2014 restrained the opponent husband from giving threats of expelling the applicant from their joint house and committing any type of domestic violence on her. However, reliefs regarding grant of half of the deposit amount and pension amount to the applicant-wife is refused. Being aggrieved by the same, the applicant-wife has approached the Sessions Court, Aurangabad by filing Criminal Appeal No.28/2015. The learned Additional Sessions Judge, Aurangabad has directed the opponent-husband to pay Rs.4,000/- p.m. towards the maintenance of the applicant-wife from the date of application and confirmed rest of the Judgment and order passed by the Magistrate. Hence, this writ petition.

5. The learned counsel for the petitioner-Husband submits that, the applicant-wife is residing jointly with all the family members in their house. She is also doing job of vegetable vendor. She gets money under Sanjay

Gandhi Yojana. She has also maintained a separate account in Devgiri Nagari Sahakari Bank Ltd., and she is operating the said account. Learned counsel submits that, the opponent-husband is looking after medical treatment of both of them. Learned counsel submits that, widow of his deceased son Ramesh namely Usha is staying in the house alongwith her children and opponent-husband is looking after her family. Learned counsel submits that, retiral benefits by way of lumpsum amount is kept in the joint account for construction of house and as such, there is no question of granting any separate maintenance to applicant-wife.

6. Learned counsel for the applicant-wife submits that, the applicant-wife is aged about 62 years. Opponent-husband is not looking after her. The opponent has failed to adduce any evidence to substantiate his contention that the applicant-wife is doing job of vegetable vendor and earning something. Admittedly, the opponent-husband is getting Rs.14,000/- p.m. as a pension and the learned Additional Sessions Judge has, therefore, rightly

directed the opponent to pay Rs.4,000/- p.m. to the applicant-wife as maintenance. No interference is required. There is no merit in the writ petition. Writ Petition is liable to be dismissed.

7. On perusal of the Judgment and Order passed by the Courts below and evidence adduced by the parties in support of their rival contentions, it appears that, the applicant is an old aged lady and though the opponent is getting monthly pension of Rs.14,000/- he is not taking care of his old aged wife. P.W. Usha who is widow of their deceased son Ramesh has stated that the opponent husband was giving certain amount for house expenses to the applicant wife when he was working as line man in the B.S.N.L. office, however, after retirement he started avoiding to give amount to the applicant-wife for domestic expenses. She has further deposed that, the opponent is used to spend his pension amount on liquor and gambling. She has further deposed that, when the opponent-husband was not doing any job, the applicant-wife was doing some work and she was maintaining the entire family, even from the savings she

had constructed the house. She has further deposed that, after retirement the opponent-husband is not looking after the applicant-wife and even he is not spending anything for her medical treatment. It appears that, the learned Additional Sessions Judge, Aurangabad has rightly considered the entire evidence on record and accordingly awarded maintenance @ Rs.4,000/- p.m. No interference is required. I do not find any fault in the Judgment and Order of the Additional Sessions Judge, Aurangabad. Hence, order.

O R D E R

- I. Criminal Writ Petition is hereby dismissed.
- II In the circumstances, there shall be no order as to costs.

(V.K. JADHAV, J.)

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aaa/-