

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 321 OF 2015

NASIM ASLAM KURESHI
VERSUS
ASLAM MIYA KURESHI & ORS

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Advocate for Petitioner : Mr. Pathan Zafar M
Advocate for Respondents 1 to 7 : Mr. Vijay R. Autade h/f Mr. K.B. Autade
APP for Respondent No.11: Mr. S.N. Kendre

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CORAM : V. K. JADHAV, J.
DATED : 13th JANUARY, 2016

PER COURT:-

1. By consent of learned counsel for respective parties, heard finally at admission stage.

2. The petitioner filed an application under Section 12 of Protection of Women from Domestic Violence Act 2005 before the J.M.F.C. Newasa, bearing Misc. Criminal application No. 139 of 2009. The respondents herein appeared and denied the adverse allegations. The learned Magistrate partly allowed the said application and granted maintenance allowance to the petitioner at the rate of Rs.2000/- p.m. from the date of filing of application alongwith other reliefs. Being dissatisfied with the said order, respondent Nos. 1 to 7 herein, preferred criminal appeal before the Sessions Court, Shrirampur, which was subsequently transferred to

Newasa after establishment of Additional Sessions Court at Newasa. The appellate court has partly allowed the appeal only by interfering in the maintenance amount and instead of Rs.2000/- p.m. modified the order and reduced the maintenance amount to Rs.1000/- p.m.. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the trial court after considering the evidence produced on record has granted very meager amount of maintenance to the petitioner-wife at the rate of Rs.2000/- p.m. Learned counsel further submits that the appellate court without recording any reason simply reduced the said maintenance amount from Rs.2000/- p.m. to Rs.1000/- p.m.. Learned counsel further submits that alongwith rejoinder, the property extract is submitted before this Court which shows that present respondent No.1 owned and possessed the residential house. Learned counsel thus submits that impugned judgment and order thus liable to be quashed and set aside and the judgment and order passed by the trial court to the extent of granting maintenance amount be confirmed.

4. Learned counsel for respondents submits that the respondent No.1 is doing labour work and there is no other evidence showing his earning other than labour work. Learned counsel further

submits that even assuming that respondent No.1 is doing labour work, at the most, it can be worked out that he is getting Rs.200/- per day, corresponding to Rs.6000/- p.m. Learned counsel further submits that present petitioner-wife had admitted before the trial court that respondent No.1 is required to maintain his three children and his aged mother and in view of this learned Judge of appellate court has rightly modified the order passed by the trial court and granted maintenance amount at the rate of Rs.1000/- p.m. to the petitioner-wife.

5. It appears from the record that elder son of respondent No.1 is at present 16 years old. It is difficult for petitioner-wife to maintain herself in such meager amount of Rs.1000/- p.m. She has no independent source of income and she is unable to maintain herself. In view of the above, it would be just and proper if the amount, as directed by the appellate court, is enhanced to Rs.1500/- p.m. from Rs.1000/- p.m. The trial court has granted maintenance amount from the date of application, the same is maintained. In the result, following order is passed:-

O R D E R

I. Writ petition is partly allowed.

- II. The order passed by the Additional Sessions Judge, Newasa dated 18.7.2014 in criminal appeal No. 16 of 2014 to the extent of granting maintenance to the petitioner-wife at the rate of Rs.1000/- is modified and the said amount is enhanced to Rs.1500/- p.m.. The said amount be paid to the petitioner-wife from the date of application.
- III. Writ petition is disposed of accordingly. No costs.

(V. K. JADHAV, J.)

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