

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 490 OF 2015

Musthtaq Noormaohammad Shaikh,
Age : 30 years, Occu.: Labour,
R/o Nawale Galli, Belapur,
Tq. Shrirampur, Dist. Ahmednagar .. Petitioner

Vs.

1] Ayesha @ Nagama Mushtaq Shaikh
Age : 24 years, Occu. : Service

2] Lucky Mushtaq Shaikh,
Age : 3 years, Occu. : Nil

3] Ali Mushtaq Shaikh,
Age : 2 years, Occu.: Nil,

Resp. No. 2 and 3 are minors
U/g of mother i.e. applicant no.1

All R/o Navala Galli, Belapur,
Tq. Shrirampur, Dist. Ahmednagar .. Respondents

Mr. R.A. Tambe, Advocate for petitioner
Mr. S.N. Rodge, Advocate for respondent nos. 1 to 3

CORAM : V.K. JADHAV, J.

DATE : 18/10/2016

ORAL JUDGMENT :

Rule. Rule made returnable forthwith.

Heard finally with consent of the parties at the
admission stage.

2. Being aggrieved by the judgment and order passed by the learned Judicial Magistrate First Class, Rahata dated 25/3/2014 in Criminal Misc. Application No. 17 of 2012 and the judgment and order passed by the learned Additional Sessions Judge, Kopargaon dated 22/1/2015 in Criminal Appeal No. 1 of 2014, confirming thereby the order passed by the learned Magistrate, the original non-applicant no.1/husband has preferred this Criminal Writ Petition.

3. Brief facts giving rise to the present Writ Petition, are as follows :-

. Respondent no.1-wife got married with the petitioner on 25/10/2009. Respondent nos. 2 and 3 are the children born to them out of the marital relations. However, respondent no.1 was subjected to cruelty on account of non-fulfillment of the unlawful demand of Rs.1,50,000/- for purchasing a car by the petitioner and others.

. On 6/11/2011, she was driven from the house by the petitioner for non-fulfillment of the said demand of Rs.1.50 Lakh for purchase of car. She was subjected to various forms of cruelty, as detailed in the application

filed before the Magistrate under the provisions of the Protection of Woman From Domestic Violence Act, 2005 (for short "**Domestic Violence Act**"). It has also alleged in the application filed before the Magistrate that on 13/11/2011, the petitioner had been to her parent's house and took the respondent no.1 wife and the children on his motorcycle for returning to his house. On way, he found that the respondent no.1-wife has not fulfilled his demand of Rs.1.50 Lakh for purchasing the car. Thus, he pushed the respondent no.1-wife from the running motorcycle and she was in-fact dragged behind the motorcycle for certain distance because of the clothes on her person entangled in the motorcycle. Even the respondent no.1-wife has filed complaint against the petitioner for the said incident and accordingly the crime came to be registered for the offence punishable under section 307 of the Indian Penal Code. After due investigation, chargesheet came to be submitted and the said case is pending before the Sessions Court.

. Respondent no.1-wife alongwith her children filed an application before the Magistrate seeking various reliefs under the provisions of Domestic Violence Act. It has stated in the application that the

petitioner is a driver by occupation having 4-5 cars at his disposal and he earns Rs.4,000/- to Rs.5,000/- per day. It has also alleged that the other non-applicants earns from different occupation and earns Rs.2000/- per day. It has also alleged that respondent no.1-wife was subjected to cruelty by the non-applicants for various reasons including the non-fulfillment of the said unlawful demand.

. The petitioner denied all the allegations made in the said application. According to the petitioner and the other non-applicants, the respondent no.1-wife was never subjected to any mental or physical cruelty and she has suo-motu started to reside in her parent's house. It has also contended that on way to the house of the petitioner, the motorcycle being driven by the petitioner met with an accident and, therefore, the respondent no.1-wife sustained the injuries. Even the petitioner, after the said accident, took respondent no.1 to the hospital and he incurred the entire medical expenses. He was taking care of respondent no.1-wife and his children, however, the respondent no.1-wife, without any just cause, started residing with her parents alongwith the children. It has also contended

that the mother of the petitioner was suffering from cancer and the petitioner had to incur huge expenses for her treatment. He has no independent source of income and thus he is unable to pay the maintenance as well as the compensation claimed by the respondent no.1-wife.

. The respondent no.1-wife and the petitioner adduced oral and documentary evidence in support of their rival contentions. Respondent no.1-wife has examined herself and also examined one Vijaykumar Aware as witness no.2, one Dr. Kashinath Tingare as witness no.3 and her own mother Sayara Khalil Shaikh as witness no.4. The petitioner has also examined himself. The learned Judicial Magistrate First Class, Rahata by its impugned judgment and order dated 25/3/2014 partly allowed the application and thereby directed the petitioner to pay Rs.2,000/- per month as maintenance to the respondent no.1-wife and Rs.1,000/- per month, each to respondent nos.2 and 3 i.e. the children from the date of the application. The learned Magistrate further directed the petitioner and other non-applicants to pay jointly and severally an amount of Rs.2,50,000/- to the respondent no.1-wife as compensation as provided under section 22 of the Domestic Violence Act for mental and

physical cruelty and in default of payment of compensation, to suffer simple imprisonment for six (6) months.

. Being aggrieved by the same, the present petitioner and other non-applicants preferred Criminal Appeal No. 1 of 2014 before the Sessions Court, Kopargaoon and the learned Additional Sessions Judge, Kopargaoon by impugned judgment and order dated 22/1/2015 dismissed the said appeal. Hence, this Writ Petition.

4. Learned counsel for the petitioner submits that during the pendency of this writ petition, his mother i.e. the original non-applicant no.2 has died. Learned counsel submits that the respondent no.1-wife has made wild allegations against the petitioner and his brother and the distant relatives. After the marriage, the respondent no.1-wife gave birth to respondent nos.2 and 3 and she was never subjected to ill-treatment as alleged. Learned counsel submits that even though while riding the motorcycle, he met with an accident and the respondent no.1-wife sustained the injuries in the said accident, the respondent no.1-wife has filed a false complaint against him for having committed offence punishable under section 307 of the Indian Penal Code.

Learned counsel submits that the said case is still pending before the Sessions Court, however, both the Courts below, considering the pendency of the said case, awarded huge amount of compensation to the respondent no.1-wife.

5. Learned counsel for the petitioner submits that respondent no.1 was not subjected to any domestic violence, as defined in the Domestic Violence Act. The respondent no.1-wife without any just cause, started residing with her parents and thus she is not entitled for any relief under the provisions of Domestic Violence Act. Learned counsel submits that there is no income proof of the petitioner and without there being any proof of his income, both the Courts below, directed the petitioner to pay the maintenance amount of Rs.4,000/- per month, in all, to the respondents. Learned counsel submits that the petitioner is unable to pay the said huge amount of compensation and further the maintenance amount, as directed by the Courts below.

6. Learned counsel for the respondents submits that the respondent no.1-wife was subjected to cruelty on account of the non-fulfillment of various demands including the dowry. She was subjected to starvation,

beating, abusing. On certain occasions, even the petitioner has tried to kill her. Even the petitioner used to beat her on her head with an intention that she should suffer from some mental problem. Furthermore, the petitioner was also suspecting about the character of respondent no.1-wife. Even the petitioner started giving ill-treatment to her by demanding an amount of Rs.1.50 Lakh for purchasing a Indica car. She was subjected to severe beating and various forms of ill-treatments on account of the non-fulfillment of the said demand. On 13/11/2011, while returning to the matrimonial home alongwith the petitioner on a motorcycle, the petitioner pushed her from the running motorcycle by giving a threat that he would kill her. However, posing the said incident as accident, the petitioner has lodged a false complaint. Respondent wife has sustained severe injuries on her head and left ear. She was admitted in Saint Look Hospital (German Hospital), Shrirampur and, thereafter, shifted to Super Speciality Hospital, Shirdi. For some time, her condition was critical. On 18/11/2011, she lodged a complaint in the Police Station against the petitioner for having committed offence punishable under section 307 of the Indian Penal Code. Respondent no.1 now has

lodged a complaint in the Police Station that the petitioner, by pushing her from a running motorcycle, attempted to commit her murder and accordingly, the crime for the offence punishable under section 307 of the Indian Penal Code came to be registered and now the case is pending before the Sessions Court. Respondent no.1-wife has incurred expenses for her physical as well as mental treatment. Learned counsel submits that the Magistrate has therefore rightly recorded a finding that the respondent no.1-wife was subjected to domestic violence as defined under the Domestic Violence Act and accordingly granted maintenance to her. The learned Magistrate has also awarded reasonable amount of compensation of Rs.2,50,000/- by considering the physical and mental suffering of the respondent no.1-wife. The learned Additional Sessions Judge has considered the entire evidence and thus rightly confirmed the order passed by the learned Magistrate. No interference is required. There is no substance in the writ petition. Writ Petition is thus liable to be dismissed.

7. On perusal of the evidence adduced by the respondent no.1-wife, it appears that she was subjected

to various forms of ill-treatment and mental harassment on account of non-fulfillment of the various demands by the petitioner. She was subjected to cruelty on account of the non-fulfillment of the demands and also by suspecting about her character. The respondent no.1-wife has given all the details of the said ill-treatments. The incident dated 13/11/2011, as narrated by the respondent no.1-wife is quite severe. According to the respondent no.1-wife, the petitioner-husband pushed her from the running motorcycle and thus she had sustained the injuries on her head and the ear. She was taken to the hospital, where nearabout 108 stitches were given. She had incurred the medical expenses to the tune of Rs.2,50,000/-. According to her, at present, she is suffering from memory loss. The respondent no.1-wife has examined her mother as witness no.4 and her mother also has duly corroborated her evidence before the Court. Her mother Sayara deposed that the petitioner was demanding an amount of Rs.1,50,000/- for purchasing a Indica car and the respondent no.1-wife was subjected to ill-treatment on account of non-fulfillment of the said demand. She has also corroborated the incident of 13/11/2011 and expressed her apprehension that there is danger of life to her daughter at the hands of the

petitioner. Respondent no.1-wife has also examined one Dr. Kashinath Tingare as witness no.3. He is a Consulting Neuro Surgeon at Saibaba Hospital, Shirdi and he had an occasion of examining the respondent no.1-wife after the said incident dated 13/11/2011. He found CLW about 20 X $\frac{1}{2}$ cms. Bone deep 'L' shaped left side of the head, abrasion 5 X 6 cm. over left side of forehead and cutting of pinna of left ear 0.5 cm. The said witness was not subjected to any cross-examination by the petitioner.

8. The petitioner has examined himself. According to him, without any just cause, the respondent no.1-wife started residing with her parents. He has deposed that he has never subjected her to cruelty and never made any unlawful demand as such. He further deposed that the said incident dated 13/11/2011, was purely an accident and he has incurred the medical expenses of respondent no.1-wife. He has also deposed that he has no independent source of income and he is doing the labour work and earning his livelihood and also maintaining the other members of the family. His mother was suffering from cancer and he had incurred huge expenses for her medical treatment.

9. I do find any substance in the evidence of the petitioner. There was no reason for the respondent no.1-wife to stay in the parent's house alongwith the children without any just cause. On the basis of the complaint lodged by the respondent no.1-wife, the crime is registered against the petitioner for having committed the offence punishable under section 307 of the Indian Penal Code and now the case is pending before the Sessions Court. Further, it appears that the respondent no.1-wife has sustained severe injuries on her head and left ear. Thus, both the Courts below rightly came to the conclusion that the respondent no.1-wife was subjected to domestic violence as defined in the Domestic Violence Act.

10. So far as the grant of maintenance by the learned Magistrate to the respondent no.1-wife at the rate of Rs.2,000/- per month and Rs.1,000/- per month each to the children, is concerned, it appears from the cross-examination of the petitioner-husband that he is driver by occupation and he is having permanent driving license to drive the four-wheeler. The petitioner has also admitted in his cross-examination that he is serving with one Dinesh Lakhote and his brother is

serving in one mill there. He has further admitted that the respondent no.1-wife has no independent source of income and she is not able to maintain herself and her children. Respondent no.1-wife has also deposed that the petitioner had purchased two cars in the name of his friends and is getting income of Rs.4,000/- to Rs.5,000/- per day from the said vehicle. It is further stated that the petitioner-husband had independent bungalow at Belapur. Thus, considering the evidence of the respondent no.1-wife and the petitioner, the learned Magistrate has rightly decided the quantum of maintenance. I do not find any fault in the said order of maintenance, directing the petitioner to pay Rs.2,000/- per month to the respondent no.1-wife and Rs.1,000/- per month each to the children.

11. So far as the compensation of Rs.2,50,000/-, as awarded by the learned Magistrate and confirmed by the learned Additional Sessions Judge is concerned, it appears from the evidence led by the parties that after the said incident dated 13/11/2011, the respondent no.1-wife was treated in a charitable hospital and as per the discharge card, she was admitted in the hospital only for four days. Even though, the respondent no.1-wife

has examined the concerned Neuro Surgeon of the said hospital, she has failed to produce on record the expenses incurred by her for medical treatment in the hospital. Thus, considering the mental and physical harassment, the compensation to the tune of Rs.1,50,000/- would be just and proper. The petitioner and other non-applicants, except the mother, who is no more, are liable to pay the same. In view of this, except this modification, no interference is required in the impugned judgment and order passed by the Courts below. Hence, I proceed to pass the following order : -

ORDER

I) Criminal Writ Petition is hereby partly allowed.

II) The judgment and order passed by the learned Judicial Magistrate First Class, Rahata dated 25/3/2014 in Criminal M.A. No. 17 of 2012 and confirmed by the learned Additional Sessions Judge, Kopergaon vide judgment and order dated 22/1/2015 in Criminal Appeal No. 1 of 2014 is hereby modified to the extent that the non-applicant nos.1 and 3 to jointly and severally pay

the amount of Rs.1,50,000/-, as compensation under section 22 of the Domestic Violence Act. Rest of the judgment and order stands confirmed.

III) Needless to state that during the pendency of this Writ Petition, if the petitioner-husband and other non-applicants have deposited certain amount, the same is required to be considered.

12. Writ Petition is accordingly disposed of. Rule is accordingly made absolute.

[V.K. JADHAV]
JUDGE

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