

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

CRIMINAL WRIT PETITION NO. 1101 OF 2015

Maya @ Minakshi w/o Yadhavrao Kale,
Age: 30 years, Occ: Household,
R/o. Watkali, Tq. Sengaon, Dist. Hingoli. ...Petitioner

versus

1. Yadhavrao s/o Narayanrao Kale,
Age: 32 years, Occ: Agri.,
2. Narayan s/o Pandurang Kale,
Age: 70 years, Occ: Agri.,
3. Gangadhar s/o Narayan Kale,
Age: 40 years, Occ: Agri.,
4. Shalikram s/o Narayan Kale,
Age: 35 years, Occ: Agri.,

All R/o. Pangri (Ku), Tq. Mantha,
Dist. Jalna. ...Respondents

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Mr. Ganesh Shinde, Advocate h/f Mr. R.M. Giri, Advocate for
petitioner
Mr. V.A. Bagal, Advocate for respondent Nos. 1 to 4

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CORAM : N.W. SAMBRE, J.

DATE : 27th APRIL, 2016

ORAL ORDER :

Learned Judicial Magistrate, First Class, Mantha, in an application under the Protection of Women from Domestic Violence Act, 2005, awarded monthly maintenance of Rs.3000/- w.e.f. 13/01/2010 in favour of the petitioner. The fact that the petitioner was

getting monthly maintenance of Rs.750/- under Section 125 of the Code of Criminal Procedure was well within knowledge of learned Magistrate while ordering monthly maintenance of Rs.3000/-. Learned Magistrate observed that the respondent-husband is not regularly paying the said amount and as such, proceeded to award monthly maintenance of Rs.3000/- under Domestic Violence Act. Learned revisional Court, by misconstruing the law laid down by Delhi High Court in the matter of **Rachna Kathuria vs Ramesh Kathuria** reported in **2010 CJ(Del) 7068** has reversed the findings.

2. I am of the view that the issue is no more *res-integra* as regards the remedy under Domestic Violence Act is in addition to the remedy under Section 125 of the Code of Criminal Procedure, available to the wife in distress. It is then required to be noted that view expressed in the matter of **Rachana Kathuria** cited supra, will of hardly any application, particularly in view of the fact that the provisions of Domestic Violence Act nowhere expressly barred the maintainability of the proceedings therein in case if the proceedings under Section 125 of the Code of Criminal Procedure are already taken recourse to.

3. In this background, in my opinion, the order impugned dated 25/05/2015 passed by the Adhoc Additional Sessions Judge-4

Jalna in Criminal Appeal No. 77 of 2012 is not sustainable and is hereby set aside. It is further ordered that the order passed by learned Magistrate in Misc. Criminal Application No. 54 of 2011 decided on 10/08/2011 govern the field. However, taking into consideration the maintenance awarded by learned Magistrate to the extent of Rs.750/- per month, the amount of monthly maintenance under Domestic Violence Act will be Rs.2500/-.

4. The criminal writ petition stands disposed of in above terms.

[N.W. SAMBRE, J.]