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

CRIMINAL WRIT PETITION NO.1111 OF 2016

Shabnam w/o Shabad Shaikh,
Age 28 years, Occ. Household,
At present R/o C/o Munir Yasin Shaikh,
Opp. Bombay Hospital, Mukund Nagar,
Ahmednagar, Tq. & Dist. Ahmednagar

..PETITIONER

VERSUS

1. Shabad s/o Yusuf Shaikh,
Age : 37 years, Occ. Business,
2. Yusuf s/o Yakub Shaikh,
Age : 64 years, Occ. Business,
3. Bahar s/o Yusuf Shaikh,
Age : 61 years, Occ. Business,

Respondent No.1 to 3 are
R/o Mamta Building, Beldar Galli,
Ahmednagar, Tq. & Dist. Ahmednagar

4. Shagufta Ajaj Shaikh,
Age : 39 years, Occ. Household,
R/o Nigadi-Pradhikaran,
Near Gandhi Hospital Pune
5. Shajiya w/o Zishan Khan,
Age : 34 years, Occ. Household,
R/o Hira Complex, Koregaon Park,
Pune

..RESPONDENTS

Mr Rahul R. Karpe, Advocate for petitioner

CORAM : N.W. SAMBRE, J.

DATE : 5th October, 2016

ORAL ORDER :

The petitioner – wife moved Criminal Misc. Application No.195 of 2013 before Judicial Magistrate First Class, Ahmednagar, claiming reliefs under sections 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 (for short “D.V. Act”), which came to be rejected by an order dated 20th November, 2015, which was confirmed in Criminal Appeal No.282 of 2015 by learned Additional Sessions Judge, Ahmednagar, vide judgment and order dated 25th July, 2016. As such, present petition.

2. Heard Mr Karpe, learned Counsel appearing on behalf of the petitioner at length. According to him, both the courts below, in a mechanical manner, have passed orders refusing the reliefs as were claimed under the provisions of the D.V. Act. He would then submit that by recording finding that there was no domestic violence, the very object with which the D.V. Act is enacted is given go-bye, while rejecting the claim of the petitioner.

3. Mr Karpe then would urge that the findings recorded by the learned Magistrate, particularly as regards income of petitioner-wife, are not correct since source of such income is temporary and cannot be considered to be permanent source of income of petitioner. He would submit that apart from the fact that there is refusal for maintenance, other reliefs as are claimed under the provisions of the D.V. Act i.e. protection order, residence order and compensation order, ought to have been considered by the trial

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court and the appellate court. According to him, once the relationship between the parties is not in dispute, the provisions of the D.V. Act are very much available to the petitioner.

4. With the assistance of learned Counsel appearing on behalf of the petitioner, I have scanned the judgments both the courts below with the evidence produced.

5. For the purpose of taking recourse to the provisions of the D.V. Act, the petitioner has relied upon, particularly two instances of assault; one dated 20th February, 2013 and another dated 2nd March, 2013. The petitioner claims to be a highly educated woman. She has neither lodged any police complaint about both the incidents nor any medical evidence to that effect is produced on record, so as to infer occurrence of such incidents. Apart from above, both the sisters of respondent-husband are married prior to the marriage of petitioner and are staying at Pune. The place of residence of petitioner at a distance of two and half km. from the house of respondent, the cause for taking medical treatment, the behaviour of the petitioner as could be inferred from her evidence rightly prompted both the courts below to record the findings in negative.

6. Apart from above, the fact remains that it is brought on record, particularly by evidence of witness no.4 examined by respondent no.1 – husband, that the present petitioner is working as a Teacher in a school and drawing certain income out of the same.

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7. Apart from above, it is required to be noted that once both the alleged incidents of causing physical violence to the petitioner were considered to have been not proved, in my opinion, the courts below have rightly inferred that in the proceedings under the D.V.Act on behalf of the present petitioner, do not call for any relief.

8. The appellate court, while dealing with the claim of the petitioner, apart from taking into consideration the above observations made by the learned Magistrate, additionally has appreciated the entire aspects of the matter and noted that the view taken by the learned Magistrate is based on the material as was brought by the present petitioner before him. It is also noted that the allegations and the evidence in that respect as is brought on record, particularly for claiming reliefs are vague so much so that those cannot be considered. Both the courts below have rightly concluded that the petitioner has failed to demonstrate any domestic violence or that she was subjected to cruelty.

9. Having appreciated the evidence as is produced on record, I am of the considered opinion that the findings recorded by both the courts below are in tune and conformity with the pleadings and evidence that was brought on record and having regard to the same, both the courts below have recorded concurrent findings against the petitioner.

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10. In view thereof, no case for interference in extra-ordinary jurisdiction is made out. Criminal writ Petition fails and thus stands rejected.

(N.W. SAMBRE, J.)

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