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

CRIMINAL WRIT PETITION NO. 1410 OF 2015

Sayyad Asif Sayyad Abbas,
Age: 45 years, Occu: Service,
R/o Sahyadri Building,
4th floor, Dr. Maheshwari Road,
Dongri, Bombay-400 009

..PETITIONER

VERSUS

1. Maherunnisa Mohammed Badshah
Sayyad,
Age: 39 years, Occu: Household

2. Abrar Asif Sayyad,
Age: 18 years, Occu: Education,

Both R/o Dhanora, Tq. Ashti,
Dist. Beed

3. The State of Maharashtra

..RESPONDENTS

Mr Z. M. Pathan, Advocate for petitioner;
Mr Pathan Zareef Khan, Advocate for respondent Nos. 1 and 2;
Mr A. R. Kale, Addl. Public Prosecutor for respondent No. 3

CORAM : N.W. SAMBRE, J.

DATE : 21st April, 2016

ORAL ORDER :

Heard Mr Z.M. Pathan, learned Counsel appearing on behalf of the
petitioner – husband and Mr Z.Y. Pathan, learned Counsel on behalf of
respondents – wife and child.

(2)

2. It is claimed by the present petitioner that respondent no.1 – wife instituted a suit seeking monthly maintenance and certain declaration, creating charge over his property, which is pending adjudication. He then claimed that the proceedings were instituted under Protection of Women from Domestic Violence Act, 2005 (for short “D.V. Act”) claiming maintenance for herself and her son. The said proceedings came to be allowed by learned Judicial Magistrate First Class, Ashti, vide order dated 13th November, 2014, directing the petitioner to pay maintenance of Rs.7,000/- to each of the respondents from the date of filing of the application, i.e. 3rd July, 2014. The appeal preferred by the petitioner – husband before the learned Sessions Judge, being Criminal Appeal No.125 of 2014, pursuant to the provisions of section 29 of the D.V. Act, came to be dismissed on 8th October, 2015. Thus, the present petition.

3. Learned Counsel appearing on behalf of the petitioner, while strenuously objecting the tenability of the proceedings at the behest of the respondents, would invite attention of this Court to the provisions of sections 3 and 23 of the D.V. Act. According to him, the marriage was claimed to have been solemnized on 26th November, 1995 and the parties have parted their ways some time in 1997. He would then invite my attention to the findings recorded by the learned Magistrate and the revisional court by declaring that even though the parties are not in domestic relations since 1997, still the provisions of the D.V. Act are very much available to the respondents.

(3)

4. The next limb of submission of learned Counsel for the petitioner is that the amount of maintenance as ordered is exorbitant and passed without considering the other liability of the petitioner as he is already married and has a family to maintain.

5. Learned Counsel appearing on behalf of the respondent – wife, while supporting the impugned order, would urge that section 3 of the D.V. Act covers even the financial and emotional harassment. According to him, it is not necessary that the parties should be in domestic relation, means any physical relation with each other. Learned Counsel then would submit that sufficient material was placed on record in the form of evidence so as to infer entitlement of the present respondents for maintenance as ordered. According to him, though the meager maintenance of Rs.1,000/- to each of the respondents is ordered by the learned Civil Court, the petitioner is not paying the said maintenance regularly. He would rely upon certain judgments of the Apex Court so as to infer that even if the parties are not in physical relationship, still the proceedings under the D.V. Act are very much maintainable and prays for dismissal of the petition.

6. Having bestowed my thoughts to the submissions made, it is required to be noted that there is an independent proceedings initiated by respondent – wife in the form of a civil suit, wherein she has claimed maintenance and charge over the property of the petitioner. In the said proceedings, by way of interim arrangement, payment of maintenance is ordered to the extent of Rs.1,000/- to each of the respondents.

(4)

7. Apart from above, it is required to be noted that the parties have admitted that since 1997 they are not in physical relationship with each other. The record depicts that the petitioner has raised a plea of talaq, which was disputed by the respondents. Be that as it may, the personal law by which the parties are governed, will take its own course. While going through the aspect of applicability of the provisions of the D.V. Act, it is required to be noted that the scope of section 3 of the D.V. Act covers the case of the respondents, particularly when she has specifically come out with a case that there was economic and emotional abuse on the part of the petitioner, who has neglected to maintain or make any arrangement thereof. It is then noted that the learned Magistrate, while dealing with the said aspect of the matter was alive to the provisions of section 3 the D.V. Act. As such, in my opinion, the learned Magistrate has rightly entertained the proceedings under the D.V. Act and the inference as is drawn by him and further upheld by the learned Sessions Judge, does not call for any inference, particularly in the background of the above referred observations and having regard to the scope of section 3 of the D.V. Act.

8. This takes me to the next limb of submission of the learned Counsel for the petitioner, as regards the quantum of maintenance. It is to be noted that the learned Magistrate has awarded maintenance of Rs.7,000/- to each of the respondents, i.e. wife and son. It is required to be noted that the son is taking education in Pune. The petitioner is working as an Engineer with Bhivandi Zilla Parishad and it has been established on

(5)

record through cogent evidence that he is receiving salary of Rs.67,000/- per month from his employer. Looking to the quantum of salary which the petitioner is receiving, maintenance of Rs.7,000/- each as is ordered, in my opinion, is reasonable one. Even if the learned Trial Court has awarded maintenance of Rs.1,000/-, the said payment will hardly create any additional burden on the petitioner.

9. In that view of the matter, in my opinion, no case for interference is made out. Criminal Writ Petition fails and stands dismissed.

10. The foregoing observations are confined to D.V. Act proceedings only.

(N.W. SAMBRE, J.)

amj