

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**CRIMINAL WRIT PETITIONS NO.30, 32 & 34 OF 2016**

Mrs. Bonafacia Emelia Abreu ..... Petitioner

V/s

State of Goa & Ors. .... Respondents

Shri E. Dias, Advocate for the Petitioner.

Shri P. Faldessai, Additional Government Advocate for Respondent No.1.

Shri V. Amonkar, Advocate for Respondents No.2 to 5.

**CORAM : C.V. BHADANG, J.**

**DATE : 13<sup>th</sup> JUNE, 2016**

**ORAL ORDER:**

All these petitions are between the same parties and involve connected questions. As such, they are being disposed off by this common judgment.

2. The petitioner Mrs. Bonafacia Emelia Abreau, is the wife of the respondent no.2 Mr. Francis Savio. The respondent Jerome D'Souza and Mrs. Lucy D'Souza are the parents in law of the petitioner, while respondent no.5 Mrs. Sebastaina D'Souza, is the sister-in-law of the petitioner.

3. The petitioner has filed proceedings under the Protection of

Women from Domestic Violence Act, 2005 (Act, for short) before the learned JMFC, Mapusa in Criminal Case No.OA/319/DVA/2011/A against the respondents no.2 to 5 for various reliefs including a protection order and an order for residence and maintenance. The petitioner had also prayed for interim reliefs. The learned Magistrate by order dated 22/08/2014 had allowed the application directing the respondents no.2 to 5 to allow the petitioner to reside in the shared household at Mapusa. The respondent no.2 i.e. the husband Mr. Francis Savio D'Souza was also directed to pay interim sum of Rs.5,000/- per month to the petitioner till the final disposal of the application.

4. The respondents no.3 to 5 herein filed Criminal Appeal no.120/2014 challenging the residential order while respondent no.2 challenged both the residential as also the order granting maintenance in Criminal Appeal No.113/2014. The petitioner filed Criminal Appeal No.47/2015 for enhancement of the maintenance. The learned Sessions Judge decided Criminal Appeal No.120/2014 and Criminal Appeal No.113/2014 by separate judgment and order dated 7/10/2015 and the net result is that the residential order directing respondents to permit the petitioner to reside in the shared household at Mapusa has been set aside while order granting maintenance has been confirmed. The Criminal

Appeal No.47/2015 filed by the petitioner was dismissed on 22/08/2014 confirming the quantum of maintenance at Rs.5,000/- per month. Feeling aggrieved, the petitioner has filed this Criminal Writ Petition.

5. I have heard the learned Counsel for the petitioner and the learned Counsel appearing for the respondents no.2 to 5. With the assistance of the learned Counsel for the parties, I have perused the impugned judgment and order passed by the learned Magistrate, as also by the learned Sessions Judge.

6. It appears that the respondent no.2 has filed Matrimonial Petition No.1/2004 against the petitioner for dissolution of marriage, in which reliance was placed on CMA No.413/2004 in which the petitioner had claimed that she is staying at Pilerne along with her parents. The learned Sessions Judge has placed reliance on an affidavit dated 13/10/2004 of the petitioner in which she has stated that since 4/06/2004 she is residing with her parents. It further appears that subsequently the petitioner filed petition for restitution of conjugal rights being Matrimonial Petition No.27/2006, in which she has claimed that the petitioner has been driven out of the matrimonial house since the year 2003 and that she is residing with her parents.

7. The learned Sessions Judge has thus found that it cannot be accepted that immediately prior to the filing of the application, the petitioner was residing in the matrimonial house i.e. the shared household. In that view of the matter, the Criminal Appeal was allowed setting aside the residential order. At this stage, to my mind no exception can be taken to the finding recorded by the learned Sessions Judge to the extent of holding that the petitioner had herself claimed that since 2003 she is residing with her parents. I thus find that the said part of the order does not need any interference in the exercise of the supervisory jurisdiction of this Court as the same does not demonstrate any jurisdictional error.

8. This takes me to the issue of maintenance. It is submitted by the learned Counsel for the petitioner that the petitioner is running a business of bakery at Mapusa and is earning more than Rs.2,00,000/- per month from the same. The learned Counsel has pointed out that the averments in this regard have not been denied by the respondent no.2 in reply and thus ought to have been accepted. It is submitted that the amount of Rs.5,000/- per month is quite inadequate looking to the present cost of living.

9. On the contrary, it is submitted by the learned Counsel for the respondents that the bakery is a partnership business in which the parents of the respondent no.2 are also the partners. It is also contended that the bakery is managed by the parents and not by the respondent no.2. At this stage, there is no material on record to come to any conclusion about the exact income and the share of the respondent no.2 therein from the said bakery business. The petitioner would get an opportunity to lead evidence when the main application is taken up by the learned Magistrate. It is not disputed that the respondent no.2 is regularly paying the amount of maintenance of Rs.5000/- per month as awarded. However, considering overall circumstances, I find that it would be appropriate if the quantum of maintenance is modified to Rs.7,000/- per month w.e.f. 1/06/2016.

10. In the result, the Criminal Writ Petition No.30/2016 and 32/2016 are hereby dismissed. Criminal Writ Petition no.34/2016 is partly allowed and the order of maintenance is modified by directing respondent no.2 to pay interim maintenance at the rate of Rs.7,000/- per month from 1/06/2016 during pendency of the application. The parties submit that the application before the Magistrate is fixed for evidence. In such circumstances, the learned Magistrate shall decide the said

application on its own merits as expeditiously as possible and within a period of six months from the receipt of this order. The petitions are disposed off in the aforesaid terms.

**C.V. BHADANG, J.**

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