

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 362 OF 2017

Vijay S/o Maruti Gaikwad, Aged 41 **PETITIONER**
Years, Occupation Service, Resident
of Puntamba, Taluka Rahata,
District Ahmednagar

V E R S U S

- 1 Sau. Savita Vijay Gaikwad, Aged 35 **RESPONDENTS**
Years, Occupation Service
- 2 Sunny Vijay Gaikwad, Aged 12 Years,
Occupation Education, Minor, under
guardianship of real mother i.e.
respondent No.1

Both resident of C/o. Zumbarlal
Rakhmaji Jadhav, R.D. Type Chal
No.24, Room No.2, Shivajinagar,
Rahuri Factory, Taluka Rahuri,
District Ahmednagar

Mr. N.C. Garud, Advocate for the Petitioner
Mr. Vivek V. Tarde, Advocate for the Respondents

CORAM : T.V. NALAWADE, J.

DATE : 13th DECEMBER, 2017

ORAL JUDGMENT :

This petition is filed to challenge the decision in Criminal Appeal No. 01 of 2016 which was pending before the Court of learned Additional Sessions Judge, Kopargaon and also to challenge the decision in Criminal M.A. No. 123 of 2014 which was pending before the Court of Judicial Magistrate, First Class, Rahata, which was filed by the present respondents against the present petitioner under the provisions of Protection of Women From Domestic Violence Act, 2005. In that proceeding, learned Judicial Magistrate directed the present petitioner and his relatives to make payment of Rs.1,000/- towards rent of the house, Rs.2,000/- towards maintenance of wife and Rs.1,000/- towards maintenance of minor issue. The direction was also given to pay Rs.50,000/- to respondents as compensation. This order was challenged by filing the appeal. In the Appeal, learned Sessions Court maintained the order made as against the present petitioner as it is, but the order as against relatives of petitioner has been set aside

by the Sessions Court.

2. The submissions made by the learned counsel for the petitioner show that, in the past, proceedings under Section 125 of Cr.P.C. was filed by the respondent-wife as against the petitioner-husband, and in that proceedings, the present petitioner had admitted the relationship between them, and due to that, the maintenance order is made under section 125 of Cr.P.C. against the present petitioner. Learned counsel for the petitioner submitted that due to order of learned Magistrate, the petitioner is required to pay around Rs.7,000/- per month and he cannot afford to make such payment to the respondents. Learned counsel for the petitioner submits that the petitioner is required to maintain his old parents, his wife and two years born child from wife Anita. It is also contended that he is required to maintain his sisters and also the family members of his brother. The contention of the present petitioner that respondent No.1 is not his wife is not acceptable and that contention was not made in the proceedings filed under

Section 125 of Cr.P.C. and that order has become final. It is not in dispute that respondent No.2 is born to respondent No.1 from petitioner. In view of this, there is no need to go into more details of this contention.

3. The contention made for the petitioner that the amount of maintenance awarded to the respondents is exorbitant, has no force. The submissions made and record show that at the relevant time the petitioner-husband was getting salary of more than Rs.30,000/- per month and after that there is revision of pay due to 7th pay-commission. Now, the husband must be getting Rs.40,000/- per month. Therefore, it can be said that respondent No.1-wife who is entitled to around Rs.8,000/- per month is not getting more amount than the capacity of petitioner.

4. Another submission was made by the learned counsel for the petitioner that Protection of Women From Domestic Violence Act came in force in the year 2005 and respondent No.1-wife had admitted that she

was living separate from the husband since the year 2003, and so, the provisions of said Act cannot be applied to the present case. In view of definition of "domestic relationship" given in Section 2 of the Act and also the other provisions of the Act, in which it is mentioned that it is required to be proved that he was in such relationship at any point of time and they lived together, aforesaid submissions of the petitioner-husband cannot be considered. There is no force in the submission on legal point.

5. Another submission was made by the learned counsel for the petitioner that the petitioner is acquitted in the criminal case which was filed against him for offence punishable under Section 498-A of the Indian Penal Code by respondent-wife and, therefore, it cannot be said that he had treated the respondent-wife with cruelty. This submission is not acceptable. The offence is required to be proved beyond reasonable doubt. Therefore, there is no force in these submissions.

6. Learned counsel for the petitioner submitted that the learned Judicial Magistrate had not called the report of Protection Officer and that is required in law under Sections 8, 9 and 12 of the Protection of Women From Domestic Violence Act, 2005. It is submitted that in provision like Section 12 of the Act, the word "shall" is used and so unless and until the report is called, the order cannot be made. This submission is also unacceptable. The provisions of Sections 8, 9 and 12 of the Act are enabling provisions and they are made for the benefit of victim like the wife. The provisions of Section 12 of Act show that if the Protection Officer has discharged his duty after approaching by wife and he submits report, that report needs to be considered under Section 12 of the Act. That does not mean that in each case the wife should approach the officer first and only after that, she can go to the Court. If the matter is before the Court and the wife preferred not to approach the Protection Officer, the Court is not bound to call the report of Protection Officer. Thus, there is no force in this submission also.

7. In view of these circumstances and the discussion made above, this Court holds that it is not possible to interfere in the decision given by the Magistrate and in the Appeal. In the result, petition stands dismissed.

(T.V. NALAWADE, J.)