

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

CRIMINAL WRIT PETITION NO.1123 OF 2017

- . Dr.Sachin s/o.Sadhuram Wakale
Age: 36 years, Occu.: Agri.,
R/o.House No.503/1, Behind Bandhkam
Bhawan, Opposite Terna Colony,
Latur, Tq. and Dist. Latur. **..Petitioner**

VERSUS

- 1) Dr.Sow.Chandarani @ Shejal w/o. Sachin Wakle
Age: 30 years, Occu.: Medical Practitioner,
R/o. C/o.Gundiram Satwaji Gaikwad
Behind Government Rest House,
Old Nagar Naka, Adarsh Ganesh Nagar,
Beed, Tq. And Dist.Beed.
- 2) Mangesh s/o. Sadhuram Wakale
(Died on 3.5.2015)
- 3) Smt.Shakuntala w/o.Sadhuram Wakale
Age: 61 years, Occu.: Household,
R/o.Shivprasad Niwas, Sarodaya
Colony, Rajiv Gandhi Chowk,
Behind Bandhkam Bhawan, Old
Ausa Road, Latur, Tq. and Dist.Latur. **..Respondents**

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Advocate for the petitioner : Mr.D.J.Choudhari

Advocate for respondent No.1 : Mr.S.S.Thombre

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CORAM : PRAKASH D.NAIK, J.

DATE : 21.11.2017

ORAL JUDGMENT:-

1) The petitioner seeks to challenge the order passed by the learned Sessions Court, Beed, dated 18.2.2017 in Criminal Appeal No.5 of 2014 as well as the Order dated 14.12.2013 passed by the learned Judicial Magistrate First Class (Court No.9), Beed in Miscellaneous Criminal Application No.115 of 2013.

2) The respondent No.1 is the wife of the petitioner. The marriage between the parties was solemnized on 24.6.2010. According to the petitioner, respondent No.1 left the house for no reason. Therefore, the petitioner issued notice dated 27.10.2012 asking her to cohabit with him. The said notice was replied on 9.11.2012. She did not resume cohabitation, hence, the petitioner initiated proceedings under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights vide Hindu Marriage Petition No.45 of 2013. The respondent No.1 appeared in the said matter and preferred application Exh.No.29/D by virtue of Section 24 of the Hindu Marriage

Act, 1955, seeking the maintenance and other monetary benefits. The respondent No.1 also filed written statement to said petition. The learned Civil Judge (Senior Division), Beed, vide order dated 15.12.2014 granted necessary expenses as well as maintenance of Rs.9,000/- per month in accordance with Section 24 of the said Act. The said petition was subsequently dismissed for default on 13.7.2016.

3) The respondent No.1 filed application bearing No.115 of 2013 under Section 12 of the Protection of Women from Domestic Violence Act, 2005, seeking various reliefs against the petitioner. The learned Judicial Magistrate First Class, Beed vide order dated 14.12.2013 partly allowed the application preferred by the respondent No.1 and granted maintenance of Rs.5,000/- per month as well as costs of Rs.2,000/-. The order dated 14.12.2013 was challenged by the respondent No.1 by preferring Appeal No.5 of 2014 before the Court of Sessions and prayed for enhancement of the compensation, maintenance, rent, costs

etc. The learned Sessions Court by order dated 21.4.2015 allowed the said appeal and granted maintenance of Rs.10,000/- per month w.e.f.28.1.2013 as well Rs.5,000/- towards medical expenses and Rs.5,000/- towards rent. The learned Sessions Court also directed the payment of compensation of Rs.1,00,000/- to be made by the petitioner to the respondent No.1. The petitioner challenged the said order on the ground that the same was passed without affording opportunity of hearing to the petitioner. The petitioner, therefore, preferred Criminal Application No.102 of 2016 before this Court. This Court vide order dated 27.4.2016 remanded the matter back to the Sessions Court for fresh consideration. The appeal preferred by the respondent No.1 was heard by the Sessions Court and vide order dated 18.2.2017, the order passed by the Judicial Magistrate First Class, Beed, dated 14.12.2013 was set aside. The petitioner herein was directed to pay Rs.12,000/- per month towards the maintenance from the date of application i.e.28.1.2013. The petitioner herein was also directed to pay Rs.6,000/-

per month towards medical expenses and Rs.6,000/- towards house rent as well as Rs.1,00,000/- towards compensation to the respondent No.1. It was further directed that amount of Rs.3,00,000/- deposited by the petitioner be adjusted towards his liability of arrears of maintenance.

4) In view of the order dated 18.2.2017 as well as the order dated 14.12.2013 passed by the Courts below, the petitioner has preferred this petition challenging the said orders.

5) The learned counsel for the petitioner submitted that while granting the maintenance of Rs.12,000/- per month and Rs.6,000/- towards medical expenses as well as Rs.6,000/- towards house rent and compensation, the Courts below have committed an error. The Courts have not appreciated the material on record and erroneously came to the conclusion that the petitioner is liable to pay the compensation. It is submitted that there was no justification for granting the medical expenses to the

respondent No.1 as directed by the Sessions Court in the absence of any material on record justifying the said direction. It is submitted that the petitioner is not in service and the evidence placed on record in that regard was not considered by the Court in proper perspective. The Court fails to take into consideration the actual income of the petitioner and an exorbitant maintenance was awarded. It is also contended that the petitioner had genuine difficulty for not adducing evidence before the lower Court. It is submitted that there is no justification for enhancing the maintenance awarded by the First Court, although the petitioner also seeks to challenge the order of maintenance etc., passed by the First Court. It is submitted that in the proceedings initiated before the Civil Judge, Senior Division, Beed in Hindu Marriage Petition No.45 of 2014 has already granted maintenance of Rs.9,000/- per month to the respondent No.1 and there was no reason to again grant maintenance to her in the present proceeding.

6) It is further submitted that the provisions of the Protection of Women from Domestic Violence Act, 2005, are not applicable to the petitioner and therefore, the Trial Court ought not to have entertained the said complaint and thereby ought not to have granted the maintenance. The Trial Court and the Appellate Court have thereby committed manifest error in passing the said orders. There are no cogent reasons for enhancing maintenance. The quantum of maintenance awarded by the Appellate Court as well as the Trial Court is not supported by evidence. It is submitted that the petitioner did not get opportunity to cross-examine the witness before the First Court and therefore, findings recorded by the said Court are contrary to law. The Appellate Court has granted maintenance of Rs.12,000/- per month without appreciating the fact that there was no evidence to enhance the said maintenance. The contention of the petitioner that the First Court itself ought not to have granted maintenance was not considered by the Appellate Court and on the contrary, Appellate Court proceeded to

enhance the maintenance. It is therefore, submitted that the impugned orders passed by the Courts below are perverse and the same are required to be set aside.

7) The learned counsel for the respondent No.1 submitted that there is no reason to interfere in the order passed by the learned Sessions Court. It is submitted that the Court has taken into consideration the material, which was placed on record and has thereafter, enhanced the maintenance and passed order by deciding the appeal preferred by respondent No.1. It is submitted that the First Court had considered the aspect of the maintenance and came to the conclusion that the respondent No.1 is entitled for maintenance and thereby awarded the maintenance and other amounts as stipulated in the said order. The respondent No.1 was aggrieved by the quantum of maintenance as well as the other amounts awarded by the Trial Court. The said factor is considered by the Appellate Court and has come to the conclusion that the maintenance awarded by the First

Court is meager amount and it requires to be enhanced. The Appellate Court has applied its mind to the documents on record and the findings given by the Trial Court and by assigning cogent reasons set aside the order passed by the First Court to the extent of enhancing the maintenance and the other amounts awarded by the Trial Court. The respondent is entitled for the maintenance of Rs.12,000/- per month as well as the medical expenses, house rent and the compensation for the harassment and mental torture caused to the respondent No.1 by the petitioner husband. It is therefore, submitted that the petition is devoid of substance and the same be dismissed.

8) I have perused the impugned orders. The Trial Court while passing order dated 14.12.2013 has awarded maintenance of Rs.5,000/- as well as expenses of Rs.2,000/-. The Trial Court had come to the conclusion that the respondent No.1 is entitled for the maintenance. The Court has also taken into consideration the

submissions advanced by the petitioner's counsel that the petitioner could not cross-examine the applicant-complainant in the proceedings before the Trial Court. The Trial Court, however, has observed that the petitioner-husband could not avail of the said opportunity of cross-examination inspite of several opportunities given to him and therefore the grievance made by the petitioner husband is not tenable in law. It is pertinent to note that the petitioner has also made similar grievance in respect of earlier order passed by the Appellate Court, which was set aside by this Court and matter was remanded to the Appellate Court for considering the appeal afresh.

9) I do not find any infirmity in the observations made by the Trial Court with regard to the fact that the petitioner husband was given opportunities to defend himself as well as the fact that the respondent No.1 is entitled for the maintenance and other benefits as stated in the order. However, the quantum of maintenance awarded

by the Trial Court is not justifiable and therefore, the Appellate Court has rightly enhanced the same. The Sessions Court while deciding the appeal preferred by the respondent No.1 has observed that the petitioner herein had appeared before the Trial Court and filed the written statement but failed to lead any evidence and had not availed the opportunity to contest the application. The Sessions Court has taken into consideration the Roznama of the Trial Court, which depicts that inspite of opportunities given to the petitioner-husband, he did not cross-examine the complainant. The Trial Court has therefore proceeded on the basis of evidence, which was available on record and after hearing both the parties, had decided the matter. The Appellate Court has observed that the Trial Court had recorded the findings in paragraphs 6 and 7 with regards to the financial status of the parties and that prima-facie case of domestic violence was made out by the appellant-wife before the Trial Court. The Appellate Court considered all the aspects including the material on record and passed the

order dated 18.2.2017. However, as far as the medical expenses of Rs.6,000/- per month awarded by the Appellate Court, it has been observed that the respondent no.1 had claimed different reliefs under Section 20 of the Protection of Women from Domestic Violence Act, 2005, from the petitioner to the tune of Rs.8,10,000/- including maintenance, medical expenses and compensation. The Trial Court had considered the above claims of the respondent No.1 while granting reliefs. It is pertinent to note that the Trial Court did not consider the relief of grant of medical expenses. From the record and the reasoning given by the Sessions Court and the findings of the Sessions Court while deciding the appeal, it is not clear on to what count the medical expenses are being provided to the tune of Rs.6,000/- per month to the respondent No.1. There is nothing to indicate that the respondent No.1 is ailing and requires the medical expenses as claimed by her before the First Court and which is considered by the Appellate Court. I do not find any evidence to support the said claim and there is

no cogent reason assigned by the Appellate Court to award medical expenses to the tune of Rs.6,000/- per month to the respondent no.1. However, as far as other benefits granted to the respondent no.1 vide order dated 18.2.2017, I do not find any reason to interfere in the same. The Sessions Court has taken into consideration, the observations made by the Trial Court, the material on record and has awarded the maintenance of Rs.12,000/- per month as well as the house rent of Rs.6,000/- and compensation of Rs.1,00,000/-. The Appellate Court has also considered the fact that the amount of Rs.3,00,000/- deposited by the petitioner herein be adjusted towards his liability of arrears of maintenance.

10) In the aforesaid circumstances, the order of the Sessions Court is required to be confirmed except the amount of Rs.6,000/- towards medical expenses awarded by the Appellate Court, is required to be set aside.

11) In the circumstances and for the reasons stated

herein above, the petition is disposed of by passing the following order:-

ORDER

(I) Criminal Writ petition No.1123 of 2017 is partly allowed.

(II) The impugned order dated 18.2.2017, passed by the Additional Sessions Judge, Beed, granting maintenance of Rs.12,000/- per month to the respondent No.1 from the date of application i.e. 28.1.2013 and Rs.6,000/- per month towards house rent as well as compensation of Rs.1,00,000/- is hereby confirmed.

(III) The said order dated 18.2.2017, passed by the Sessions Court to the extent of granting medical expenses of Rs.6,000/- per month to the respondent no.1 is set aside.

[PRAKASH D.NAIK, J.]

LATER ON

At this stage, the learned counsel for the petitioner submits that this order may be stayed for a period of eight weeks as the petitioner intends to challenge the order before the higher Court. Considering the issues involved in this petition which includes maintenance awarded to the respondent No.1, the prayer made by the petitioner cannot be granted. Hence, request for stay of the order is rejected.

[PRAKASH D.NAIK, J.]