

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.971 OF 2016

(Shamu s/o Janardhan Gedam and another vs. Sau. Ravina w/o Shamu Gedam)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri J.M. Shamkuwar, Advocate for petitioners.

CORAM : P.N. DESHMUKH, J.

DATED : AUGUST 7, 2017

Heard Shri Shamkuwar, learned Counsel for petitioners.

None for respondent though served. Even on the earlier date, none was present for respondent and matter was adjourned with a view to give opportunity to respondent to defend the petition on merits.

Challenge in this petition is to judgment dated 27/9/2016 passed by learned appellate Court thereby dismissing the appeal preferred by petitioners against judgment dated 6/1/2015 passed by learned trial Court in the proceedings initiated by respondent wife under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

Learned trial Court on considering the evidence on record held that petitioner no.1 husband is involved in committing domestic violence to respondent and thus, allowed the complaint against petitioner no.1 husband alone and dismissed the same against petitioner no.2, who is mother in law of respondent. Petitioner

no.1 was directed to make payment of Rs.1000/- per month to respondent towards maintenance from the date of application.

Learned appellate Court considering the documents and evidence has found that respondent has established her claim under the provisions of Protection of Women from Domestic Violence Act, 2005 and dismissed the appeal, against which present petition is preferred.

Shri Shamkuwar, learned Counsel for petitioners, submits that there is no substantive evidence to establish domestic violence at the hands of petitioners to respondent nor there is evidence to establish that petitioner no.1 is having any fixed income and as such, can make payment of Rs.1000/- per month to respondent towards maintenance. It is contended that learned Courts below have not considered the fact that petitioner no.1 husband is always willing to maintain respondent, who in fact has left his company. It is further submitted by referring to the evidence of the parties that since respondent has failed to establish domestic violence against petitioner husband, she is not entitled to any maintenance. It is thus prayed that petition be allowed.

With the assistance of learned Counsel for petitioners, I have gone through the evidence of parties led before learned trial Court, which consists of evidence of respondent as well as of petitioner no.1, who has also examined two witnesses, namely, Indrapal Gajghate and Suresh Meshram in support of his case and they are

duly cross-examined. On considering evidence of parties, there is nothing brought on record, which would affect the case of respondent that petitioner no.1 committed domestic violence on her. Similar is the finding of learned trial Court as well as appellate Court. Moreover, it goes without saying that the provisions of Protection of Women from Domestic Violence Act, 2005 are social and beneficial in nature. The legislation itself is passed with an intention of providing protection to women and as such, as per settled legal position, woman is not required to lead sterling quality of evidence to establish incident of domestic violence beyond reasonable doubt, but has to make out a probable case, which evidence on record in the present case appears to have been led.

It has come on record that since date of marriage, i.e. 17/5/2013 till Holy festival of 2014 respondent was at her matrimonial home. However, during that period, she stayed at her parents' house for 4-5 months. As such, there is no substance in the case of petitioner no.1 that respondent stayed with him only for a period of one month. Further more, there is also evidence with regard to petitioner husband carrying out abortion of respondent and thereby providing physical as well as mental harassment, which further goes to establish that relations between parties were not smooth and as such, case of petitioner husband that respondent left his company without any reason cannot be said to be convincing. Admittedly, except for proceedings under the Protection of Women from Domestic Violence Act,

2005, no other proceedings are initiated between the parties.

Having considered the evidence as well as findings of learned Courts below, there appears no reason to interfere with the impugned judgments. The petition is, therefore, dismissed with no order as to costs.

JUDGE

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