

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

CRIMINAL WRIT PETITION NO.1001 OF 2016
(Smt. Varnika Deorao Hajare and others vs. Deorao Ramchandra Hajare)

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

Shri S. Borkute, Advocate for petitioners.
Shri A.S. Bhendarkar, Advocate for respondent.

CORAM : P.N. DESHMUKH, J.

DATED : JULY 6, 2017

Shri Borkute, learned Counsel for petitioners, seeks leave to amend the title clause of the petition by deleting petitioner nos.2 and 3 contending that petitioner no.2 is married and petitioner no.3 is major.

Leave as prayed is granted. Respondent nos.2 and 3 are allowed to be deleted. Amendment be carried out forthwith.

By consent of learned Counsel for both sides, heard finally.

Challenge in this petition is to order dated 19/7/2016 passed by learned Assistant Sessions Judge, Gadchiroli in Regular Criminal Appeal No. 16/2015 by which Court has set aside order dated 18/3/2015 passed by learned Judicial Magistrate, First Class, Desaiganj granting interim maintenance of Rs.3000/- per month to each of petitioner nos. 1 and 2.

It is the case of petitioner no.1 that on 10/5/2013 she was mercilessly beaten by respondent and on being ill-treated, she was driven out of house and since then she is residing separately and thus, initiated

proceedings under Section 12 of the Protection of Women from Domestic Violence Act 2005. On application made under Section 23 of the said Act, she was granted interim maintenance as aforesaid.

Perusal of the impugned order reveals that most of the facts involved in the petition are not disputed. Petitioner no.1 as well as respondent are in service as Teacher and Superintendent in Agriculture Department, Chandrapur respectively. It is further not disputed that both parties are earning handsome salary.

In the background of undisputed facts, so far as instances of domestic violence which need consideration are concerned, it appears that petitioner no.1 has admitted before trial Court in her reply to notice filed by respondent dated 25/6/2013 that higher education was completed by her only with the assistance of respondent and his relatives. It is further found that both the parties are residing separately due to their service. Learned Assistant Sessions Judge thus appears to have rightly found that at that stage there was nothing to demonstrate that petitioners were subjected to domestic violence by respondent.

Shri Borkute, learned Counsel for petitioner no.1, has submitted that aforesaid finding of learned Assistant Sessions Judge is not necessary for the purpose of deciding if petitioner no.1 is entitled for maintenance as same is subject matter of the complaint, which is pending before trial Court and above finding in the impugned order shall prejudice the trial Court.

I find no substance in the submissions

advanced in view of the fact that appellate Court in the impugned order has in clear terms stated that said findings are without considering merits of the case and what is considered is only the question as to whether petitioners were entitled for interim maintenance. In that view of the matter and having considered the fact that petitioner no.1, who is in service and is residing in her own house, is found not entitled for maintenance, order of trial Court granting interim maintenance of Rs.3000/- came to be set aside.

In view of peculiar facts involved in the petition and since petitioner no.1 is admittedly in service, I find no substance in the petition as due consideration to the issue as raised by petitioner no.1 before trial Court can be duly dealt with on merits by trial Court. In the circumstances, petition is dismissed with no order as to costs. However, Miscellaneous Criminal Case No.6/2013 pending on the file of learned Judicial Magistrate, First Class, Desaijanj, District Gadchiroli is expedited. Learned concerned Court to decide the said proceedings expeditiously and in any case within one year from today.

JUDGE

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