

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1784 OF 2017

with

CRIMINAL WRIT PETITION NO. 1785 OF 2017

with

CRIMINAL WRIT PETITION NO. 1786 OF 2017

Alka W/o Arun Mule
Age: 45 years, Occ: Household,
R/o Nimbhora, Tq. Kannad,
Dist. Aurangabad.
At present residing at Plot No.4/5,
Sarswati Sadan, Raj Sambhaji Nagar,
Jadhavwadi, Aurangabad. ... **Petitioner**

Vs.

Arun S/o Rambhau Mule
Aged: 56 years, Occ.: Government Service
R/o C/o P.K. Aghav, Chaudhari Nagar,
Mantha Road, Jalna,
Tq. & Dist. Jalna. ... **Respondent**

Mr. Rahul G. Joshi & Hashmi Taufeeque Ahmed, Advocates for the
Petitioner.

Mr. Santosh C. Zalte h/f. D.P. Palodkar, Advocate for the Respondent.

CORAM : MANGESH S. PATIL, J.
DATE : 16.07.2018

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With
the consent of both the sides the matters are heard finally and are being

disposed of by this common judgment.

2. A wife had preferred Criminal Application bearing No. 555 of 2015 under Section 12 of The Protection of Women from Domestic Violence Act, 2005. By moving application (Exhibit-4) she claimed interim maintenance. Simultaneously, even the husband preferred an application disputing the territorial jurisdiction of the Magistrate. The learned Magistrate rejected the application by which the husband had questioned the jurisdiction of the Court. However, the Magistrate granted interim maintenance to the wife @ Rs.3,000/- per month. Both these orders were carried in appeal by both the sides. The husband disputed the order directing him to pay interim maintenance as well as the order of the Magistrate holding to have jurisdiction by preferring Criminal Appeal No. 41 of 2017 and Criminal Appeal No. 123 of 2016 respectively. Whereas, the wife challenged the order on the ground of quantum and sought its enhancement. By the common judgment and order dated 13.10.2017 the learned Additional Sessions Judge rejected the appeal preferred by the wife seeking enhancement of maintenance. However, he allowed the appeals preferred by the husband. He quashed and set aside the order of the interim maintenance and remanded the matter for decision afresh for deciding the issue of jurisdiction as well as of maintenance . The wife is impugning all these orders in these three writ petitions.

3. I have heard the learned advocates for the petitioner as well as the respondent.

4. Perusal of the impugned order passed by the learned Additional Sessions Judge as well as the orders passed by the learned Magistrate awarding interim maintenance as well as upholding his jurisdiction would clearly show that the learned Additional Sessions Judge without assigning any reason has simply remanded the matter by setting aside the order granting interim maintenance. It appears that he was swayed away by the only fact that the order regarding interim maintenance was passed in the absence of the respondent. Conspicuously, even the learned Additional Sessions Judge has not ascertained as to what were the reasons which had prevented the respondent from remaining present before the Magistrate while the latter was deciding the application for interim maintenance. Even the learned Additional Sessions Judge has not assigned any reasons as to how the Magistrate had erred in holding that there was no error of invoking his jurisdiction.

5. Be that as it may, *prima facie* the question of jurisdiction was already decided by the Magistrate in the spirit of the provision of Section 27(a) of the Domestic Violence Act. The question of permanent or temporary residence is inconsequential and when the petitioner was staying within the jurisdiction of the Magistrate concerned, *prima facie*

there was no error committed by him in holding that he had jurisdiction.

6. Similarly, going by the material on record the last salary that was being drawn by the respondent was around Rs. 60,000/- per month. He was a government servant who has retired since thereafter and must be getting or would be getting half of that as pension. In addition he would also get dearness allowance and considering the fact that the interim maintenance was only awarded @ Rs.3,000/- per month, by no stretch of imagination it could be held to be disproportionate to his income.

7. Apart from the above state of affairs, it is submitted by the learned advocates of both the sides that in fact the main inquiry in the proceeding under Section 12 is already part heard before the Magistrate. The testimony of the petitioner as well as couple of witnesses has already been concluded. In view of such state of affairs, independent of the observations and the conclusions drawn earlier, it would be apposite to allow all the rights and disputes between the parties to be decided finally by the Magistrate.

8. The Criminal Writ Petition Nos. 1784 of 2017 and 1786 of 2017 are allowed. The impugned order passed by the learned Additional Sessions Judge in Criminal Appeal No. 41 of 2017 and Criminal Appeal No. 123 of 2016 are quashed and set aside.

9. The Writ Petition No. 1785 of 2017 is dismissed.

10. It is made clear that no opinion is expressed on the merits of the original dispute either in respect of the quantum or in respect of the jurisdiction and the learned Magistrate shall decide these aspects independently on merits.

(MANGESH S. PATIL, J.)

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