

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

**Criminal Revision No.77 of 2015**

**(Papita Someshwar Kartale .vs. Bhakru Fattuji Kartale and others. )**

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

Court's or Judge's orders.

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Mrs. A.P. Shinde, Advocate for Applicant.

Mr. P.R. Wagh, Advocate for Respondent Nos 1 to 3.

**CORAM : NITIN W. SAMBRE, J.**

**DATED : AUGUST 28, 2018.**

The parties to the application are husband and wife which fact is not in dispute. The applicant initiated proceedings under the provisions of Protection of Women from Domestic Violence Act contending that the respondent-husband has parted her company and started staying with some other lady. Considering the claim made, the learned Magistrate ordered payment of maintenance of Rs.1500/-, compensation of Rs.5000/- and Rs.1000/- towards rent vide order dated 01.04.2014, which was reversed by the learned Sessions Judge in Criminal Appeal No. 30 of 2014 in exercise of powers under Section 29 of the said Act. As such this revision.

2. Mrs. Shinde, learned counsel for the applicant-wife would urge that the evidence which was brought on record was appreciated by the learned Magistrate and order of payment of maintenance was passed. According to her, the appellate Court has re-appreciated the evidence and has passed an order allowing the appeal in a cryptic manner with an observation that there is no domestic violence.

3. She would then urge that in view of Section 2(f) of the Act, once the domestic relationship is not disputed and the fact that the respondent-husband is not maintaining the applicant, there is sufficient material which prompted the learned Magistrate to pass an order, which is upset by the appellate Court contrary to the said provision.

4. Per contra, learned counsel for the respondents would oppose the claim and submit that the evidence is appreciated by the learned Sessions Judge, if not in particular words, but the order of the appellate Court in categorical terms observes that there was no domestic violence. He would then urge that no findings were recorded qua the income of the respondent-husband by the learned Magistrate. According to him that being so, the present application is liable to be rejected as the order passed under Section 29 of the Act is in accordance with law.

5. Considered rival submissions. The fact that the applicant was married to the respondent-husband is not in dispute. It appears from the record that the applicant and respondent-husband are residing in the same village. In the pleadings of the applicant and evidence, it has come on record that the respondent-husband has subjected the applicant to domestic violence and evidence to that effect is appreciated by the learned Magistrate. It is upon consideration of the entire pleadings and evidence, the Magistrate in exercise of powers under the said Act, has ordered payment of

maintenance of Rs.1500/- and Rs.1000/- towards the house rent.

6. In appeal, instead of appreciating the entire pleadings and evidence as was done by the Magistrate, the appellate Court proceeded to pass a cryptic order. The learned Appellate Court has not considered the pleadings and evidence of the parties. Apart from above, once there was no denial to the domestic relationship and it is established by the applicant that the domestic violence was practised on her, it was expected of the appellate Court to record findings on the same after appreciating the pleadings and evidence. The order impugned passed by the appellate Court, in my opinion, sans merits so also the reasons. That being so, in my opinion, the present application needs to be partly allowed with the following order:-

The impugned order dated 09.02.2015 passed by the learned Sessions Judge, Bhandara in Criminal Appeal No. 30 of 2014 is hereby set aside. The parties hereto agree that they shall appear before the learned Sessions Judge on 10.09.2018 in the aforesaid appeal which is restored to the file of the learned Sessions Judge. The learned Sessions Judge shall decide the appeal within a period of three months from the date of the appearance of the parties.

7. The revision, as such stands partly allowed.

Rajendra  
Gajananrao  
Halwai  
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signed by  
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Gajananrao  
Halwai  
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**JUDGE**