

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.365 OF 2018

Sow. Jayshri W/o Ravindra Rathod,
Age-28 years, Occu:Household,
R/o-C/o-Ruplal Ratan Jadhav,
Mauli Nagar, Behind Surya Lawns,
Beed Bypass, Aurangabad.

...PETITIONER

VERSUS

- 1) Ravindra Ramu Rathod,
Age-30 years, Occu:Medical Practitioner,
R/o-Kale Colony, Near Monda,
Sillod, Tq-Sillod,
Dist-Aurangabad,
- 2) Shardabai Ramu Rathod,
Age-54 years, Occu:Household,
R/o-Kale Colony, Near Mondha,
Sillod, Tq-Sillod,
Dist-Aurangabad.

...RESPONDENTS

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Mr.B.A. Dhengle Advocate for Petitioner.
Mr.D.P. Palodkar Advocate for Respondent
Nos.1 and 2.

...

WITH

CRIMINAL WRIT PETITION NO.378 OF 2018

- 1) Dr. Ravindra Ramu Rathod,
Age-31 years, Occu:Medical Practitioner,
R/o-Kale Colony, Near Monda, Sillod,
Tq-Sillod, Dist-Aurangabad,
- 2) Shardabai Ramu Rathod,
Age-50 years, Occu:Household,
R/o-Kale Colony, Near Mondha, Sillod,
Tq-Sillod, Dist-Aurangabad.

...PETITIONERS**VERSUS**

Sau Jayshri Ravindra Rathod,
Age-25 years, Occu:Household,
R/o-C/o-Ruplal Ratan Jadhav,
Deolai area, Near Surya Lawns,
Mauli Nagar, Beed-By-pass,
Aurangabad.

...RESPONDENT**...**

Mr.D.P. Palodkar Advocate for Petitioners.
Mr.B.A. Dhengle Advocate for Respondent.

...**CORAM: T.V. NALAWADE, J.****DATE : 24TH JUNE, 2019****JUDGMENT :**

1. Rule. Rule made returnable forthwith in both the proceedings. By consent heard both the

sides for final disposal.

2. Criminal Writ Petition No.365 of 2018 is filed by the wife, the applicant of Application No.870 of 2012, which was pending in the Court of Judicial Magistrate, First Class, Aurangabad. She had filed the proceeding under Section 12 of the Protection of Women from Domestic Violence Act (hereinafter referred as "Domestic Violence Act") for maintenance allowance and other reliefs. In addition to maintenance amount, compensation of Rs.50,000/- was granted by the learned J.M.F.C. under the provisions of Section 22 of the Domestic Violence Act. It was made payable by the husband and mother of the husband. Maintenance was granted at the rate of Rs.1500/- per month and the husband was directed to give Rs.2000/- per month towards the house rent. This decision was challenged by the husband and his mother by filing Criminal Appeal No.14 of 2014 under the provisions of

Section 29 of the Domestic Violence Act. This Appeal is partly allowed by the learned Additional Sessions Judge, Aurangabad. The compensation order made by the learned J.M.F.C. is set aside but the remaining order is maintained. As the remaining order is maintained, the husband and his mother have filed Criminal Writ Petition No.378 of 2018, and as the compensation order is set aside by the Sessions Court, Criminal Writ Petition No.365 of 2018 is filed by the wife.

3. The submissions made and the record show that the wife had made allegations in the proceeding that as the husband was the only son to his parents, harassment was started after three months of the marriage to her by saying that she was not conceiving. She has made allegations that she was physically and mentally tortured on petty counts and on the count that her parents had not given the gas connection in the marriage. The

allegations are made that on the instigation of mother, the husband was assaulting her. She contended that they were saying that she was suffering from Psoriasis and so the husband had committed mistake in marrying with her and he would prefer to marry other girl and can get big dowry.

4. It is the contention of the wife that she is having Diploma in Pharmacy and the husband wants to see that she starts medicine shop and for that he was asking her to bring Rs.3,00,000/- from her parents. It is her contention that her parents were not in a position to give the money and so more harassment was given to her. It is the contention that ultimately she became pregnant and she delivered male child when she was living with her parents. It is contended that newly born child was suffering from jaundice and her father was required to spend around Rs.25,000/- on said

illness. It is contended that even after spending of such amount, husband and his mother picked up quarrel by saying that proper gifts were not given to them after the birth of the child. It is contended that when she was discharged from the hospital, nobody turned up to see the child to the house of the parents. It is contended that she was accepted in the house only when she gave signature on one bond paper to the husband and his mother. It is contended that there was condition put in the bond paper that she should not contact her parents even on phone and she should not go to the house of her parents. It is contended that the husband has stopped discharging matrimonial obligations and had put condition that she should first bring money from her parents for medical shop.

5. It appears that on the basis of report given by the wife, crime was registered for the

offence punishable under Section 498-A of the Indian Penal Code against the husband and his relatives. As the wife was driven out of the matrimonial house, she gave the report and then she filed the proceeding under the Domestic Violence Act for getting maintenance and compensation. The wife contended that the husband is practicing doctor and he is in a position to give monthly maintenance to her and to her son and she is entitled to get compensation of Rs.10,00,000/- and also some amount for house rent, in addition to maintenance amount. The husband denied all these contentions. Both the sides gave evidence.

6. It is not disputed that the wife has no source of income though she is having qualification of Diploma in Pharmacy. Though the husband tried to show that she is making income by working in medical shop, no witness was examined

to prove that contention. As per the aforesaid contentions, wife gave evidence before the J.M.F.C. On the basis of that material, the J.M.F.C. came to the conclusion that there was both, mental and physical violence and by depriving her of the resources and by not giving anything for maintenance of child, the act of violence under the Domestic Violence Act was committed by the husband and his mother. The J.M.F.C. considered the revenue record of the property showing that agricultural land was standing in the name of father of the husband. Father is in service and nobody is depending on the husband. Considering the status of the parties and aforesaid circumstances, the order was made against the husband of compensation of Rs.50,000/- and allowances of aforesaid nature.

7. The Sessions Court has set aside the order of compensation by observing that there is

no convincing material or proof regarding the domestic violence and the allegations of domestic violence made are vague in nature.

8. When the case is proved on oral evidence, the appellate Court is not expected to interfere in the findings given by the trial Court on the basis of oral evidence. Admittedly, crime was registered for offence punishable under Section 498-A of the Indian Penal Code against the husband and his mother and there are allegations of aforesaid nature in the present proceeding. Considering the purpose behind the proceeding and the relief to which the wife is made entitled and also the circumstances that her parents were required to pay on the illness of the child, the wife was entitled to get the compensation. In view of the status of the parties even when there was claim of Rs.10,00,000/-, compensation of Rs.50,000/- was given by the learned J.M.F.C. That

amount was not on higher side. The Family Court had already given some maintenance and due to that small amount was given as allowance of maintenance by the learned J.M.F.C. Thus the learned J.M.F.C. had applied the mind and had considered all the relevant circumstances. Considering the nature of the proceeding and the procedure which is required to be followed in such proceeding, which is summary in nature, the Sessions Court ought not to have interfered in the decision given by the learned J.M.F.C. Such decision cannot sustain in law. Similarly, other allowances like monthly maintenance of Rs.1500/- and Rs.2000/- per month towards house rent, are meager amounts considering the status of the parties. So interference is not possible in the order made by the learned J.M.F.C. in respect of those allowances. In the result, following order:

O R D E R

I) Criminal Writ Petition No.365 of 2018 is allowed.

II) The decision of the Additional Sessions Judge, Aurangabad in Criminal Appeal (PWDVA) No.14 of 2014 of setting aside the order of compensation, is set aside and the order made by the Judicial Magistrate First Class, Aurangabad in Criminal M.A. No.870 of 2012 is restored.

III) Rule is made absolute in those terms.

IV) Criminal Writ Petition No.378 of 2018 is dismissed. Rule is discharged in that proceeding.

[T.V. NALAWADE, J.]