

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

29 CRIMINAL WRIT PETITION NO. 550 OF 2016

Chhaya W/o Vilas Choudhari,
Age : 34 years, Occu.: Household,
R/o.: C/o.: Laxman Kadu Mahajan,
Khadka Road, Ramdaswadi, Bhusawal,
Tq. Bhusawal, District : Jalgaon. Petitioner

Versus

1. Vilas s/o Prabhakar Choudhari,
Age : 54 years, Occu.: Photographer,
R/o.: Near Shrikrushna Mandir,
Budhwar Peth, Savda, Tq. Raver,
District : Jalgaon.
2. The State of Maharashtra
(Deleted in view of order
dated 17.07.2018) ... Respondents

...
Mr. D. A. Bhide, Advocate for Applicant.
Mr. D. R. Adhav, Advocate for Respondent No.1.
...

CORAM : MANGESH S. PATIL, J.
DATE : 18.02.2019

ORAL JUDGMENT :-

Heard.

2. Rule. Rule is made returnable forthwith.
3. The learned advocate for respondent No.1 waives service.

With consent of both sides the matter is heard finally at the stage of admission.

4. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner, who is the wife of the respondent No.1 is impugning the order passed by the Judicial Magistrate F. C. in Miscellaneous Criminal Application No. 1116 of 2009 dated 4 July 2015 and the dismissal of Criminal Appeal No. 41 of 2015 preferred by her, by the learned Additional Sessions Judge, Bhusawal by the judgment and order dated 11 March 2016.

5. The application was preferred by the petitioner under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter 'D. V. Act'.) inter alia with the averments that the marriage was solemnized on 29 May 2004 and the couple had begotten a son. She was maintained properly for the initial period, but since thereafter she was illtreated on account of demand of the in-laws for money. The

respondent also once tried to strangle her. He also threatened her of dire consequences. Consequently, she filed miscellaneous criminal application claiming maintenance under Section 125 of the Cr.P.C. and the Magistrate had awarded her Rs.700/- per month for herself and Rs.200/- per month for the child. Since the respondent refused to take her for cohabitation and she had to spend for the medical treatment of the son, she claimed following reliefs :

I) Preventing him from trying to communicate with her Section 18-D of the D. V. Act;

II) Preventing him from transferring movable and immovable properties under Section 18-E;

III) Making provision for her separate residence and rent therefor under Section 19 (1)(F);

IV) Asking him to execute a bond as a security for preventing him from committing domestic violence as contemplated under Section 19-E;

V) For return of Streedhan as contemplated under Section 19 (8); and

VI) Monitory relief under Section 20 claiming an amount of Rs.8,000/- per month for the treatment of the son and Rs. 70,000/- by way of compensation under Section 20 for the mental and physical harassment meted out to her.

6. Application was contested by the respondent obviously on the ground that there was no domestic violence and that he was ever ready and willing to maintain the son. He was even ready to spend for his medical treatment. She was cohabiting with her parents on her own and therefore, there was no domestic violence.

7. After conducting hearing, the Magistrate by the impugned judgment and order held that there was a domestic violence and also held her entitled to various reliefs under Sections 18, 19, 20 and 22 and directed the respondent inter alia to pay her Rs. 500/- per month for securing alternate accommodation and Rs.70,000/- in lump-sum by way of compensation for the medical treatment of the son. The learned Magistrate also

directed him not to commit any domestic violence. He also awarded Rs.1,000/- by way of costs.

8. Being aggrieved, both the parties preferred criminal appeals under section 29 of the Domestic Violence Act. By the impugned judgment and order the learned Additional Sessions Judge dismissed both the criminal appeals. Hence, this writ petition.

9. I have heard both the sides at length. Going by the reliefs granted by the Magistrate, apparently, all the prayers made by the petitioner were duly considered and necessary direction was given in respect of all the reliefs contained in Sections 18, 19, 20 and 22. Apparently one cannot comprehend as to by which of these orders or directions the petitioner was not satisfied with. The memo of appeal preferred by the petitioner also did not specifically contain any ground as to how she was aggrieved by the various directions given by the learned Magistrate. Even the learned advocate for

the petitioner could not point out precisely as to which of the orders / directions could be said to be running contrary to the interest of the petitioner.

10. A lame attempt was made to point out the quantum of maintenance which she is getting under Section 125 of the Cr.P.C. was insufficient for her maintenance. However, a careful perusal of the application preferred by her under Section 12 as well as the memo of appeal preferred by her under Section 29 of the Domestic Violence Act nowhere shows that she had made any prayer for getting any monthly maintenance. Therefore, there was occasion for considering in the present proceeding any claim by her for monthly maintenance.

11. It is further necessary to observe that though at the initial stage the petitioner was claiming that her son is suffering from cancer and even certificate issued by a doctor was produced on record to that effect, the subsequent medical record reveals that it was merely a suspected malignancy. Therefore, even

during pendency of the writ petition this Court by the order dated 14 December 2018 had directed necessary investigation to be done for the diagnosis. Today the learned advocate for the respondent has tendered across the bar the medical reports showing that, as was directed necessary investigations have been duly conducted and it transpires that the child does not suffer from cancer / malignancy.

12. Perusal of the judgment of the learned Additional Sessions Judge clearly shows that by elaborate reasoning he has found that relief granted to her was more than enough particularly in respect of the monitory claim for Rs.70,000/-. I find no sufficient basis to interfere in the concurrent findings of facts of the two courts below. The writ petition is devoid of merit and is liable to be dismissed. The writ petition is dismissed. Rule is discharged.

13. At this juncture the learned advocate for the petitioner submits that it should be clarified that the petitioner may

invoke necessary remedy for claiming maintenance or enhanced maintenance.

14. In my considered view, it is always open for a party to invoke all the remedies as are available to it under the law. Therefore, no such clarification need to be given.

(MANGESH S. PATIL, J.)

vsm/-