

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

CRIMINAL WRIT PETITION NO.1358 OF 2018

Sau. Varsha W/o Raosaheb Dhas,
Age: 32 years, Occ. Household,
R/o: C/o Phad Deepak Nivrutti,
Deogiri building B-1, C-4, MSDCL Quarters,
In front of Police Commissioner,
Mill Corner, Aurangabad.

... **PETITIONER**

Versus

Raosaheb S/o Bhimrao Dhas,
Age: 32 years, Occ: Service,
R/o Shikshak Colony Kaij,
At post Kej, Tal. Kej,
District Beed.

... **RESPONDENT**

...
Advocate for Petitioner : Mrs. R.R. Tandale h/f. S.S. Thombre
Advocate for Respondent : Mr. S.S. Jadhavar
...

CORAM : MANGESH S. PATIL, J.
DATE : 19.09.2019

ORAL JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned advocate Mr. S.S. Jadhavar waives service for the respondent. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioner is wife of the respondent. She has filed the proceeding under Section 12 of the Protection of Women from Domestic

Violence Act, 2005. While deciding the proceeding she was *inter alia* granted an amount of Rs.3,000/- per month towards rent under Section 19 of that Act. In an appeal preferred by the respondent, the learned Additional Sessions Judge allowed it only to the extent of this direction by the Magistrate to pay her rent @ Rs.3,000/- per month and quashed and set aside that order. This is how the petitioner-wife is before this Court.

3. The learned advocate for the petitioner submits that it is because of the domestic violence that the petitioner had to file a proceeding under Section 12 of the Domestic Violence Act. The observations and the conclusions by the Magistrate about there being such a domestic violence stands confirmed and concluded in as much as the respondent has not preferred to challenge the order of the Magistrate to the extent it has been confirmed by the Sessions Court in the appeal preferred by him. It is only to the extent of direction to pay rent that the appeal was allowed.

4. This shows that she has no other alternate accommodation. Though it is alleged that she has been staying at the house of her mother, she cannot be expected to stay on the streets till the time husband shows some mercy and pays rent.

5. Besides, at this juncture there is no material to show that she

does not need any alternate accommodation. The learned Additional Sessions Judge has simply interfered with the direction to pay the rent on the ground that there was no documentary evidence. The law does not require any such evidence to be led before putting a claim under Section 19 of the Domestic Violence Act. The observations and the conclusions by the Sessions Court are clearly perverse, arbitrary and capricious and may be quashed and set aside and the order passed by the Magistrate be restored. In addition the learned advocate for the petitioner submits that there is evidence to show that the respondent has been earning a salary to the tune of Rs.44,000/- per month and can easily pay the amount of rent.

6. The learned advocate for the respondent submits that without there being iota of material before the Magistrate, by resorting to some conjectures and surmises a direction was given to pay rent to the petitioner. The Sessions Court has rightly interfered with in such discretion exercised by the Magistrate. The learned advocate also submits that there is no evidence to show that he has been earning Rs.44,000/- per month. Already he is saddled with a heavy responsibility of providing maintenance to the petitioner @ Rs.8,000/- per month and asking him to pay a further amount of Rs.3,000/- per month would create a lot of financial burden on him.

7. I have carefully gone through the order passed by the Magistrate

as well as by the Sessions Court. Apparently, it is only after proof regarding domestic violence that the Magistrate had awarded several reliefs to the petitioner including that of paying rent to her under Section 19. He has specifically observed that in view of the domestic violence being meted out to the petitioner she could not be asked to share the household. Having reached to such a conclusion he found her entitle to claim the rent under Section 19.

8. It is to be noted that since the Magistrate was exercising a power under Section 19, it nowhere requires the destitute to furnish any rent receipts. It is only after proof of domestic violence when a Magistrate reaches a conclusion that she cannot be asked to stay in the same shared household that as an alternative a provision can be made to pay her some rent so that she can secure an alternate accommodation.

9. As against this the relief under Section 20 of the Domestic Violence Act empowers the Magistrate to grant monetary relief in the form of reimbursement of losses and perhaps in that case, it could be a situation where the Court can insist for some documentary proof. When the order was passed by the Magistrate under Section 19 and not under Section 20, it was indeed, in the peculiar facts and circumstances, uncalled for for the learned Additional Sessions Judge to expect the petitioner to come with some documentary proof regarding her liability to pay rent. The observations

therefore are quite perverse and arbitrary and need to be interfered with.

10. Assuming for the sake of arguments that the petitioner has been staying in the house of her mother, still, it cannot be expected that merely because she can find some shelter in the house of her mother she cannot and should not go for alternate accommodation exclusively for her. When the law enables her to claim rent to secure alternate accommodation, she may secure one once she starts getting the rent. She cannot be expected to first take a premises on rent and then seek its reimbursement.

11. Taking in to account all the aforementioned circumstances, there was no sufficient and cogent reason for the learned Additional Sessions Judge to interfere in the discretion exercised by the Magistrate objectively. The impugned order passed by the learned Additional Sessions Judge in Criminal Appeal No.139 of 2016 is quashed and set aside and the one passed by the Magistrate is restored.

12. The Writ Petition is allowed. The rule is accordingly made absolute.

[MANGESH S. PATIL, J.]