

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 207 OF 2018

Akhtar Jafar Bagwan	]	
Age – 31 Years, Occ : Labour	]	
R/at – Flat No. 107, Limbra Apartment	]	
Pune – 411 048	]	...Petitioner/
	]	Orig. Respondent No. 1

Versus

- | | | |
|--|-------|----------------------------|
| 1. Sou. Nasim Akhtar Bhagwan |] | |
| Age – 29 Years, Occ : Beauty Parlour, |] | |
| R/at – Galli No. 28, Vaishnavi Nagar, |] | |
| Kalepadal, Hadapsar, Pune – 411 028 |] | ...Respondent No. 1 |
| | | (Orig. Applicant) |
|
2. The State of Maharashtra |
] |
...Respondents |

Mr. Ashok B. Tajane for Petitioner.
Ms. Savita A. Prabhune for Respondent No. 1.
Mr. A.R. Patil, APP for Respondent – State.

CORAM	:	S.S. SHINDE, J.
RESERVED ON	:	25th JULY 2019
PRONOUNCED ON	:	5th AUGUST 2019

JUDGMENT

1. This petition takes an exception to the order below Exhibit – 5 dated 27th March 2017 passed by the learned Judicial Magistrate First Class, Cantonment Court, Camp, Pune – 1 in Criminal M.A. No. 281 of 2018 and judgment and order passed by the learned Additional

Sessions Judge, Pune dated 08.12.2017 in Criminal Appeal No. 194 of 2017. The petitioner has also prayed for dismissal of application at Exh. 5 filed by Respondent No. 1.

2. It is the case of the Petitioner that, Respondent No. 1 Sou. Nasim Akhtar Bagwan has filed an application before the Trial Court under the Domestic Violence Act. It is her case that marriage of the Petitioner and Respondent No. 1 took place on 29.06.2014 as per Muslim rites. After the marriage, she cohabited with the petitioner. Respondent No. 1 is having one daughter from her first marriage. Respondent No. 1 is divorcee. After the marriage, the petitioner started insisting Respondent No. 1 to leave her daughter, and keep her in orphan house. On that count, the petitioner started ill-treating Respondent No. 1. The Petitioner ill-treated her by way of not giving food; petitioner used to beat her. The petitioner stopped paying rent and also providing money for livelihood of Respondent No. 1. Due to his harassment, Respondent No. 1 has filed criminal complaints before police for so many times. Respondent No. 1 is not able to maintain herself and she has to pay rent for the house, therefore, Respondent no. 1 has filed application before the Trial Court for various reliefs under the Domestic Violence Act.

3. The Trial Court after hearing both the parties passed the order directing the petitioner to pay interim maintenance to the tune of Rs. 5,000/- per month to Respondent No. 1 and Rs. 3,000/- per month towards rent.

4. Being aggrieved by the said order passed by the Trial Court, Petitioner preferred an appeal before the Sessions Court at Pune. However, the said appeal was also dismissed. Hence, this Writ Petition.

5. Learned counsel appearing for the Petitioner submits that, the impugned order is passed by the Trial Court without considering the documents and evidence on record. Respondent No. 1 is second wife of the Petitioner. She was insisting the Petitioner to give 'Talak' to the first Wife, and also used to give threats to the Petitioner and his first wife. Petitioner has no sufficient source of income for paying the compensation. It is submitted that, Respondent is running Beauty Parlours and earning handsome amount. It is submitted that, the Petitioner, his wife and four children are surviving on the earning of Petitioner to the tune of Rs. 5,000/- to 6,000/- and it is not possible for him to grant maintenance to Respondent No. 1. Respondent No. 1

has not placed on record any document showing that Petitioner is earning Rs. 30,000/- to 35,000/- from business of furniture. Respondent No. 1 is earning Rs. 35,000/- by running beauty parlor. It is further submitted that Petitioner is not biological father of daughter of Respondent No. 1 and therefore, the question of maintaining the daughter would not arise. Therefore, learned counsel appearing for the petitioner prays that application may be allowed.

6. On the other hand learned counsel appearing for the Respondent No. 1 submits that, there are concurrent findings of facts recorded by the both the Courts below that Petitioner is entitled for the maintenance amount as ordered by the trial Court. It is submitted that, the petitioner is earning Rs. 30,000/- to 40,000/- from the business of selling the furniture.

Both the Courts below upon appreciation of factual aspects taken a view that petitioner shall pay Rs. 5,000/- per month to Respondent No. 1 towards maintenance and Rs. 3,000/- per month towards rent.

7. Heard learned counsel appearing for parties at length, with their able assistance perused the grounds taken in the Petition,

annexures thereto, documents placed on record and concurrent findings of facts recorded by the both the Courts below. Sessions Court in the impugned judgment has observed that, the Petitioner has not laid any evidence which can suggest that the Respondent No. 1 is earning Rs. 35,000/- per month from running beauty parlor. It is brought on record by the counsel appearing for the first Respondent that, for running beauty parlor, license under the shop act is necessary. However, after 2014 the said shop act license is not renewed. Therefore, Respondent No. 1 is not getting any income from the beauty parlor. Sessions Court has recorded that due to domestic violence caused by the petitioner to Respondent No. 1 she is residing separately since she is driven out from the matrimonial home. She is residing in rented room. Keeping in view the concurrent findings recorded by the Courts below directing the Petitioner to pay compensation of Rs. 5,000/- per month towards interim maintenance and Rs. 3,000/- per months towards rent cannot be said to be unreasonable or perverse. Therefore, no case is made out for causing interference in the impugned judgment and order. Hence, Writ Petition stands rejected.

8. The observations made herein above are prima facie in

nature and confined to the adjudication of the present Criminal Writ Petition. The trial Court shall not get influenced by the aforesaid observations during the course of trial. All contentions are kept open for being agitated before the trial Court.

(S.S. SHINDE, J.)