

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO.1100/2019

Mahesh Shyorajsingh Chauhan

..VS..

Sau.Nutan w/o Maheshsingh Chauhan and anr

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

Court's or Judge's Order

.....
Shri Ajinkya Hande, Counsel for the Applicant.
Shri R.D.Wakode, Counsel for Non-applicant No.1.
Shri N.B.Jawade, Addl.P.P for Non-applicant No.2/State.

CORAM : V.M.DESHPANDE, J.
DATED : JANUARY 06, 2020.

1. Heard learned counsel Shri Ajinkya Hande for the applicant, learned counsel Shri R.D.Wakode for non-applicant No.1, and learned Additional Public Prosecutor Shri N.B.Jawade for non-applicant No.2/State.

2. The applicant who is husband of non-applicant No.1 is challenging order dated 11.5.2017 passed below Exhibit 1 by learned Judicial Magistrate First Class (Court No.3), Akola in Criminal M.A.No.941/2015 together with judgment and order dated 8.8.2019 passed by learned Additional Sessions Judge, Akola in Criminal Appeal No.193/2017. Learned Magistrate vide order dated 11.5.2017, directed the applicant to pay amount Rs.4000/- per month to non-applicant No.1 and Rs.3000/- per month to their daughter towards maintenance charges. The said

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order was challenged in statutory appeal which was registered as Criminal Appeal No.193/2017 and learned Additional Sessions Judge, Akola dismissed the appeal.

3. According to learned counsel Shri Ajinkya Hande for the applicant, the applicant is paying maintenance charges as directed by the Court below, however he submitted that maintenance is on higher side and, therefore, it be reduced. It is his submission that the applicant is a daily wage earner. On the said factual backdrop, it is his submission that Rs.7000/- per month is on excessive side.

4. The non-applicant No.1 filed proceedings under the provisions of the Protection of Women from Domestic Violence Act, 2005. The said proceedings are still pending on the file of learned Magistrate. In the said proceedings, an application for *interim* relief was moved by the wife under Section 23 of the said Act. The said application was contested.

5. It is not disputed before me by learned counsel for the applicant that the applicant resides along with his parents in a joint family. In paragraph No.9 of the impugned order passed by learned Magistrate, it is clear that joint family is having extensive agricultural property. If that be so, though share of the applicant is not carved out, he has a share in the said agricultural property. Though it is submission of learned counsel for the applicant that the applicant is a daily wage earner, there is nothing on record to substantiate the said submission. In fact, documents filed

by non-applicant No.1 along with list Exhibit 8, there is a copy of Jamabandi Exhibit-8(1) which shows that the applicant is having half share in two agricultural properties situated at village Karoli, tahsil Tijari, district Alwar and the said land is adjacent to industrial area.

6. Admittedly, relation as husband and wife is not at all denied by the applicant. It is also not the case of the applicant that non-applicant No.1 earns her livelihood by engaging herself and/or she has any potential to earn the same. This Court is mindful that though there may be potential for a lady to acquire her livelihood, that does not debar her from making prayer for maintenance if she is being subjected to domestic violence. Both Courts below have considered the aspect in its correct perspective warranting no interference under inherent powers.

7. In this view of the matter, the criminal application is rejected and disposed of accordingly.

JUDGE

!! BRW !!

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