

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 CRIMINAL WRIT PETITION NO.1986 OF 2019

VAISHALI W/O. SHIVAJI KARALE AND ANR
VERSUS
SHIVAJI S/O. DATTATRAYA KARALE AND OTHERS

Mr.Ram B. Deshpande, Advocate for the petitioners.
Mr.G.R. Syed, Advocate for respondent Nos.1 to 5.

CORAM : N.R.BORKAR, J.
DATED : 25.11.2021

PC :-

01. This petition takes an exception to the judgment and order dated 18.11.2019 passed by the learned Sessions Judge, Beed in Criminal Appeal No.81 of 2018.

02. The petitioners herein had filed application under the provisions of the Protection of Women from Domestic Violence Act, for various reliefs including for maintenance. The learned Magistrate allowed the said application, by order dated 22.11.2018. The learned Magistrate directed the respondents to pay an amount of Rs.2500/- per month to petitioner No.1 and Rs.1500/- per month to petitioner No.2 from the date of application.

The respondents had filed the appeal against said order of the learned Magistrate. The appeal filed by the respondents came to be allowed by the order impugned.

03. I have heard learned Counsel for the petitioners and learned Counsel for the respondents.

04. I have perused the order impugned. In para 11 the Sessions Judge has recorded following findings :-

"11. The case in hand is not a case where domestic violence has been pleaded. It is a mere demand of reliefs. Therefore, unless the domestic violence is established, no relief can be granted to the applicants. The maintenance on the ground of residing separately or neglect cannot be considered as a ground to grant the same to the applicants under the D.V. Act. Therefore, when the basic requirement to file the application under D.V. Act is absent, no relief, much less of maintenance, can be granted to the applicants. Thus, point No.1 is answered in the negative."

05. I have perused the original application filed by the petitioners. There are allegations in relation to desertion and refusal to maintain. It also appears that

the respondents are facing trial for the offence punishable under section 498-A of the IPC. Even the point for determination was framed by the learned Magistrate in respect of domestic violence and the learned Magistrate has answered the said point in favour of the petitioners. The learned Appellate Court has not held that said finding is wrong. The order passed by the Appellate Court thus needs to be set aside and the matter needs to be remanded back to the Appellate Court. In the result, following order is passed :-

O R D E R

- (i) The writ petition is partly allowed.
- (ii) The impugned judgment and order is set aside.
- (iii) The learned Appellate Court shall decide the appeal afresh in accordance with law.
- (iv) The parties shall appear before the Appellate Court on 20.12.2021.

[N.R.BORKAR, J.]