

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

CRIMINAL WRIT PETITION NO.424 OF 2020

- 1] Shrikrushna s/o Asaramji Revaskar,
Aged 48 yrs., Occ: Service.
- 2] Asaramji s/o Shivramji Revaskar (Dead).
- 3] Panchafula w/o Asaramji Ravaskar,
Aged 68 yrs., Occ: Housewife.

All R/o More Sankul, Jalamb Road,
Wadi, Khamgaon, Tq. Khamgaon,
Dist. Buldhana.

..... **PETITIONERS**

...V E R S U S...

Pushpa w/o Shrikrushna Revaskar,
Aged 45 yrs., Occ: Housewife,
R/o C/o B.J. Wadekar,
Dnyaneshwar Nagar, Dabki Road,
Aagerves, Old City, Akola,
Tq. & Dist. Akola.

..... **RESPONDENT**

CRIMINAL WRIT PETITION NO.504 OF 2020

- 1] Shrikrushna s/o Asaramji Revaskar,
Aged 48 yrs., Occ: Service.
- 2] Asaramji s/o Shivramji Revaskar (Dead).
- 3] Panchafula w/o Asaramji Ravaskar,
Aged 68 yrs., Occ: Housewife.

All R/o More Sankul, Jalamb Road,
Wadi, Khamgaon, Tq. Khamgaon,
Dist. Buldhana.

..... **PETITIONERS**

...V E R S U S...

Pushpa w/o Shrikrushna Revaskar,
Aged 45 yrs., Occ: Housewife,
R/o C/o B.J. Wadekar,
Dnyaneshwar Nagar, Dabki Road,
Aagerves, Old City, Akola,
Tq. & Dist. Akola.

..... **RESPONDENT**

Mr. A.M. Tirukh, Advocate for Petitioners.
Mr. R. Khemuka, h/f Mr. V.R. Deshpande, Advocate for
Respondent.

CORAM: **ROHIT B. DEO, J.**
DATE: **24th JUNE, 2021.**

ORAL JUDGMENT:

Heard Mr. A.M. Tirukh, the learned Counsel for the petitioners and Mr. Rishabh Khemuka, the learned Counsel for the respondent.

2. Rule.

3. With consent, the petitions are finally heard at the admission stage.

4. Common issues of fact and law are involved, and it would be convenient to dispose of both the petitions by common judgment.

5. Criminal Writ Petition 504/2020 is preferred by Mr. Shrikrushna, who is the husband of respondent Mrs. 'P', and his parents, challenging the judgment dated 26.11.2019 rendered by the learned Additional Sessions Akola, in Criminal Appeal 38/2017 whereby the appeal preferred by Mrs. 'P' under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (DV Act) is partly allowed and the maintenance and rent granted by the learned Judicial Magistrate in Misc. Criminal Case 1724/2014 is enhanced from Rs.8000/- to Rs.15,000/- and Rs.2000/- to Rs.3000/-, respectively.

Criminal Writ Petition 424/2020 is preferred by Mr. Shrikrushna and his parents challenging the judgment dated 26.11.2019 rendered by the learned Additional Sessions Judge, Akola in Criminal Appeal 119/2017 whereby the appeal preferred by them against the judgment dated 30.01.2017 rendered by the learned 6th Joint Judicial Magistrate First Class, Akola in Misc. Criminal Case 1724/2014 is dismissed.

6. Before advertng to the facts of the petition, it would be appropriate to note the conduct of the petitioner 1 Mr. Shrikrushna. This Court, vide order dated 15.03.2021 directed Mr. Shrikrushna to clear the arrears of maintenance on or before

the next date of hearing and put Mr. Shrikrushna on notice that if the arrears are not cleared the petitions may not be entertained on that ground alone. Concededly, the order dated 15.03.2021 is not complied with.

7. Adverting to the facts of Criminal Writ Petition 504/2020, Mrs. 'P' and the two children from the wedlock preferred an application under Section 125 of the Code of Criminal Procedure, 1973 (Code) seeking maintenance. The learned 4th Joint Judicial Magistrate First Class, vide judgment dated 02.05.2005 directed Mr. Shrikrushna to pay monthly maintenance of Rs.800/- to Mrs. 'P' and monthly maintenance of Rs.450/- each to the children.

8. Mrs. 'P' and the children sought enhancement under Section 127 of the Code vide Petition E-117/2014, which came to be allowed vide judgment dated 26.12.2016. The learned Judge, Family Court, Akola enhanced the monthly maintenance payable to Mrs. 'P' to Rs.5000/- and the monthly maintenance payable to the children to Rs.3000/-.

9. Record reveals that Mrs. 'P' preferred an application

under Section 12 of the DV Act impleading her husband Mr. Shrikrushna and his parents. The said application came to be decided vide judgment dated 30.01.2017 rendered by the 6th Joint Judicial Magistrate First Class, Akola. The operative part of the said judgment reads thus:

ORDER

- (1) The application is partly allowed.*
- (2) Non-applicants are restrained from committing any type of Domestic Violence against the applicant as per Section 18 of Protection of Women from Domestic Violence, 2005.*
- (3) Non-applicant No. 1 shall provide maintenance of Rs.8000/- per month to the applicant and her children from the date of this order under Section 20 of Protection of Women from Domestic Violence, 2005.*
- (4) Non-applicants shall pay the amount of Rs.2000/- p.m. as rent amount for her residence.*
- (5) Non-applicants shall pay compensation of Rs.1,00,000/- to the applicant under Section 22 of Protection of Women from Domestic Violence, 2005.*
- (6) Copy this judgment and order be provided to applicant, non-applicants, Protection Officer and concern police officer, Akola free of costs vide Section 24 of Protection of Women from Domestic Violence Act, 2005.*

10. The learned Magistrate, while directing payment of

monthly maintenance of Rs.8000/- to Mrs. 'P' noted that the entire evidence adduced by Mrs. 'P' went un rebutted since the defence of Mr. Shrikrushna and his parents was struck off due to willful disobedience of the order of interim maintenance. Notably, Mr. Shrikrushna and his parents did not participate in the proceedings, and did not avail even the right of addressing the Court.

11. Mrs. 'P' was dissatisfied with the quantum of maintenance and rent and preferred Criminal Appeal 38/2017 under Section 29 of the DV Act, which came to be partly allowed by judgment dated 26.11.2019 rendered by the Additional Sessions Judge, Akola. The monthly maintenance of Rs.8000/- was enhanced to Rs.15,000/- for Mrs. 'P' and her children and the rent was enhanced from Rs.2000/- to Rs.3000/-. It would be apposite to note the observations of the Appellate Court in paragraph 19 of the judgment.

19. It is significant that, the salary certificate of the respondent No.1 Exh. 33 reveals that, in the month of October-2015 the gross salary of respondent No.1 was Rs.53,295/-. Obviously, from October-2015 till November-2019 the salary of respondent No.1 will be increased i.e. approximately up to Rs.60,000/-. At the same time the claimed quantum of maintenance to the

tune of Rs.20,000/- per month is also exorbitant. In such mitigating circumstances, in my humble and considered opinion, awarding maintenance of Rs.15,000/- per month from the date of appeal to the appellant for herself and her children appears to be just. Moreover, the findings of Ld. Trial Court in respect of the rent of Rs.2000/- is also inadequate and therefore, it deserves to be enhanced to the tune of Rs.3000/- per month, whereas the compensation amount awarded by the trial Court appears to be just and therefore, it warrants no interference of this Court. With these observations, I answer my findings to point No.1 in negative and point No.2 in partly affirmative.

12. Mr. Tirukh, the learned counsel for Mr. Shrikrushna would submit that due to lack of coordination between Mr. Shrikrushna and his lawyer, opportunity of effective participation in the proceeding was denied.

13. The submission noted supra, is noted only as a courtesy to the learned counsel Mr. Tirukh. Mr. Shrikrushna willfully disobeyed the order of interim maintenance. The defence was struck off. Concededly, Mr. Shrikrushna neither challenged the order of striking off the defence nor did he participate any further in the proceeding. Mr. Shrikrushna, notwithstanding striking off the defence, did have the limited right of canvassing submissions, which was not availed.

14. It is difficult to appreciate how the willful disobedience of the interim order can be casually attributed to lack of coordination with the counsel. In the interest of observing restraint, no further observation is made.

15. Mr. Tirukh then submits that the fact that in proceedings under Section 127 of the Code, the maintenance receivable by Mrs. 'P' was enhanced from Rs.800/- to Rs.5000/- and the maintenance receivable by the two children was enhanced from Rs.450/- each to Rs.3000/- each was not brought to the notice of the learned Judge of the Family Court.

16. In my considered view, the submission of Mr. Tirukh that the failure of Mrs. 'P' to bring on record the enhancement vitiates the maintenance order deserves rejection for at least two reasons. The first is, that Mr. Shrikrushna was well aware of the order of enhancement dated 26.12.2016. Nothing prevented Mr. Shrikrushna from diligently bringing on record the said development in the proceedings under the DV Act. The second reason is that, even factoring in and bestowing due consideration to the enhanced maintenance, considering the income of Mr. Shrikrushna, the total maintenance, i.e. that awarded in

proceedings under the Code and the maintenance awarded in proceedings under the DV Act, is neither unjust nor disproportionate. The monthly maintenance payable to Mrs. 'P' is Rs.5000/- granted in the 127 Code proceedings and Rs.15,000/- in proceedings under the DV Act, which works out to Rs.20,000/- per month. Be it noted, that the monthly maintenance of Rs.15,000/- granted in appeal under the DV Act is not exclusively for Mrs. 'P', rather composite maintenance is granted to Mrs. 'P' and the two children.

17. I have no hesitation in holding that the quantum of maintenance is fair and is neither harsh nor arbitrary.

18. In Criminal Writ Petition 424/2020 the judgment dated 26.11.2019 rendered by the Additional Sessions Judge, Akola in Criminal Appeal 119/2017 preferred by Mr. Shrikrushna and his parents, is challenged.

19. Criminal Appeal 119/2017 was preferred since Mr. Shrikrushna and his parents were aggrieved by the maintenance granted to Mrs. 'P' and the children under the DV Act. The order rendered under the DV Act was challenged by both,

Mr. Shrikrushna and his parents and Mrs. 'P'. While dealing with Criminal Writ Petition 504/2020, I have already held that there is no error in the appellate order under the DV Act which grants maintenance of Rs.15,000/- to Mrs. 'P' and the children. In this view of the matter, the appeal preferred by Mr. Shrikrushna and his parents, came to be rightly rejected.

20. In view of the reasons recorded while considering Criminal Writ Petition 504/2020, Criminal Writ Petition 424/2020 is held sans merit.

21. Both, Criminal Writ Petition 424/2020 and Criminal Writ Petition 504/2020 are rejected with costs.

JUDGE