

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

**Criminal Writ Petition No. 594 of 2021**  
**Ankita Sople Vs. Abhishek Sople**

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

-----  
Court's or Judge's orders  
-----

Mr. S.P. Bhandarkar, Advocate for the petitioner

**CORAM : MANISH PITALE, J.**

**DATED : AUGUST 23, 2021**

By this Writ Petition, the petitioner seeks to challenge order dated 09/10/2019, passed by the Court of Judicial Magistrate First Class, Nagpur, whereby maintenance amount of Rs.10,000/-, as interim maintenance was directed to be given to the petitioner under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "D.V. Act").

2. The record shows that the order was passed by the Magistrate on 09/10/2019. Aggrieved by the same, the respondent i.e. the husband filed an appeal bearing Criminal Appeal No. 351 of 2019, under Section 29 of the D.V. Act before the Sessions Court at Nagpur.

3. By judgment and order dated 15/02/2020, the Court of Additional Sessions Judge-7, Nagpur, dismissed the appeal, confirming the order

of the Magistrate, holding that the direction to pay interim maintenance of Rs.10,000/- per month was proper. The contentions raised on behalf of the respondent to the effect that the said amount was exorbitant or that it could not have been granted, were rejected and the order of the Magistrate was confirmed. It is significant that the petitioner before this Court i.e. wife did not file an appeal against the order passed by the Magistrate.

4. It is after the appeal filed by the husband was dismissed by the judgment and order dated 15/02/2020 and the order of the Magistrate was confirmed that the petitioner has chosen to file the present Writ Petition, challenging the order of the Magistrate, as also the judgment and order passed by the Sessions Court. It is further prayed that the amount of interim maintenance be increased from Rs.10,000/- to Rs.51,000/- per month.

5. This Court is of the opinion that since the petitioner chose not to challenge the order passed by the Magistrate by filing an appeal under Section 29 of the D.V. Act, insofar as she is concerned, the order passed by the Magistrate had attained finality. She is not entitled to make a grievance about the amount of interim maintenance granted to her by the Magistrate and confirmed by the Sessions Court after dismissal of appeal filed by the respondent (husband).

6. In this context, Mr. S.P. Bhandarkar, learned counsel for the petitioner invited attention of this Court to Section 29 of the D.V. Act and contended that an appeal under the said provision would not lie from the order of the Magistrate because it concerns grant of interim maintenance to the petitioner before this Court. On this basis, it is submitted that since the petitioner could not have filed an appeal under Section 29 of the D.V. Act, to challenge the order of Magistrate, she was entitled to file the present writ petition after the appeal filed by the respondent (husband) was dismissed on merits.

7. Section 29 of the D.V. Act reads as follows :

**“Section 29. Appeal** – There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.”

8. There is nothing in the above quoted provision to indicate that the petitioner could not have filed an appeal against the order passed by the Magistrate in the present case. The learned counsel then sought to refer to Section 23 of the D.V. Act, which provides for power to the Magistrate to grant interim and *ex-parte* order. There is nothing in the said provision to support the contention raised on behalf of the petitioner that an appeal could not have been filed by the petitioner under Section 29 of the D.V. Act, as the order of the Magistrate pertains to

grant of interim maintenance, when the petitioner was aggrieved by the quantum of such interim maintenance.

9. Since there is no substance in the said contention raised on behalf of the petitioner, this Court is of the opinion that as the petitioner chose not to challenge the order of the Magistrate by filing an appeal before the Sessions Court under Section 29 of the D.V. Act, she is not entitled to maintain the present Writ Petition.

10. Accordingly, the Writ Petition is dismissed.

JUDGE