

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

CRIMINAL WRIT PETITION NO.652 OF 2018

(Smt. Shruti w/o Nilesh Kale and another Vs. Nilesh s/o Ambadasrao Kale and another)

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

Court's or Judge's orders.

Mr. V.B. Bhise, Advocate for Petitioners.

CORAM: ROHIT B. DEO, J.

DATE: 18th JANUARY, 2021.

Heard Mr. V.B. Bhise, the learned counsel for the petitioners. None appears on behalf of the respondents, who are duly served.

2. The petitioner 1 Smt. Shruti is the legally wedded wife of respondent 1 Nilesh. Petitioner 2 Ms. Ku. Spruha is the child from the wedlock.

3. The petitioners have a limited grievance. The petitioners approached the Judicial Magistrate First Class, Court-6, Amravati in Miscellaneous Criminal Application 90/2016 seeking maintenance and rental compensation.

4. The learned Magistrate directed respondent 1 Nilesh to pay interim maintenance of Rs.10,000/- per month to Mrs. Shruti and Rs.10,000/- per month to Ms. Spruha and additionally directed payment of Rs.5000/-

per month as rental compensation, from the date of the order.

5. The wife and the husband were both aggrieved by the order of the learned Magistrate, and preferred separate appeals under section 29 of the Protection of Women from Domestic Violence Act, 2005.

6. The appeal preferred by the wife Mrs. Shruti came to be dismissed and the appeal preferred by the husband Nilesh is partly allowed.

7. The operative part of the order partly allowing the appeal preferred by Nilesh is reads thus:

ORDER

- I. Cril. Appeal No.47/2017 is hereby partly allowed.*
- II. The impugned order is modified so far as the amount of rent is concerned.*
- III. The order is modified to the extent that as and when the Respondents reside in a rented house as per her requirement, the appellant shall pay the rent of the said house but this rent shall not exceed a sum of Rs.5,000/-.*
- IV. R & P be sent to the Learned Trial Court accordingly.*
- V. The appellant No.1, is directed to pay the arrears in the interim maintenance*

order passed by the Learned Trial Court in Criminal Application No.90/2016, after adjusting the amount in the modified form passed so far as rent is concerned.

VI. The Appeal stands disposed of in above terms.

8. The reasons which persuaded the Appellate Court to modify the order of the learned Magistrate are recorded in paragraph 15 which reads thus:

15. However, this court has some reservation so far as the amount on rent of Rs.5000/- per month awarded to the Respondents is concern. The Respondents are though legally entitled for residing in a share household are presently residing with her parents. She is not spending anything on her residence as of now. The impugned order is silent as to on what basis the rental amount of Rs.5,000/- has been fixed by the Trial Court. It would have been more appropriate if the Respondent No.1 had been allowed to take a house on rent as per her genuine requirement and then would have directed the Appellant No.1, to pay the rent of the house,, so taken on rent, which in the given case appears to have not been done.

9. I do not find any serious error in the order impugned since the rent is not reduced as such. The Appellate Court notes that Mrs. Shruti was then residing with her parents and that as and when she resides in a rented accommodation, she shall be paid rent not

exceeding Rs.5000/-.

10. The learned counsel Mr. Bhise states that Mrs. Shruti, as a fact shifted to rental accommodation on 01.10.2016 and resided there till she temporarily shifted to Mumbai.

11. The order impugned is clear. If Mrs. Shruti has shifted to rented accommodation, she is entitled to rental compensation to the extent of the actual rent paid, albeit capped at Rs.5000/-. Mrs. Shruti is free to take out appropriate motion/proceedings for recovery of the amount of rent.

12. I do not see any serious prejudice to Mrs. Shruti due to the modification directed by the Appellate Court.

13. The petition is disposed of, subject to what is observed *supra*.

JUDGE