

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

Criminal Writ Petition No. 785 of 2021

[Sachin S/o Nanaji Sumatkar and ors. ..vs.. Sau. Nita W/o. Sachin Sumatkar and ors.]

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

Court's or Judge's orders

Mr. Mahesh Rai, Advocate for the petitioners

CORAM : ROHIT B. DEO, J.

DATED : 17-12-2021

Heard.

2. The petitioners are challenging the judgment dated 13-5-2021 rendered by the learned Additional Sessions Judge, Warora in Criminal Appeal 3/2020 whereby the judgment dated 18-1-2020 rendered by the learned Judicial Magistrate First Class, Warora is set aside and the appeal is partly allowed by granting maintenance of Rs. 2000/- (Rupees Two Thousand) per month to respondent 1 - wife and Rs. 1000/- (Rupees One Thousand) per month each to respondents 2 and 3, who are minor children, aged 4 and 2 years respectively.

3. This petition was heard for some time on 8-12-2021 and then listed on 9-12-2021.

4. During the course of hearing on 9-12-2021, learned counsel for the petitioners Mr. Mahesh Rai undertook, on instructions received from petitioner 1 - husband who was present in the Court that an amount of Rs. 1,00,000/- (Rupees One Lac) shall be deposited in this Court within a week, since the petitioner 1 - husband is admittedly in arrears of maintenance.

5. On 16-12-2021, noticing that petitioner 1 – husband did not abide by the undertaking, the petition was adjourned till today to enable the petitioner 1 – husband to make amends. Today, learned counsel Mr. Rai candidly informs that petitioner 1 – husband would not be in a position to honour the undertaking. I could have dismissed the petition on the short ground that writ jurisdiction ought not to be exercised to grant relief to a litigant in contempt.

6. However, I have examined the merits of the matter and having done so, I see no reason to interfere with the judgment of the appellate Court in writ jurisdiction.

7. Learned counsel for the petitioners Mr. Mahesh Rai would emphasize that the learned Magistrate

recorded a finding that domestic violence is not proved, which finding is consistent with the evidence on record and, therefore, ought not to have been overturned in appeal.

8. In view of the submission canvassed by Mr. Rai, I have scrutinized the evidence on record, *albeit* for the limited purpose of ascertaining whether a case is made out for exercise of writ jurisdiction.

9. Respondent 1 – wife has stepped into the witness box. She has vividly described various instances of mental and physical cruelty. She has deposed that her husband spent the money, given to him by her paternal family to purchase clothes, in gambling and consuming liquor. She has asserted that in order to pressurize her for bringing amount from her parents, she was physically assaulted. She has given the details, *inter alia* the dates on which her father gave son-in-law amounts as demanded. The last straw was that respondent 1 – wife was sent to her paternal home with a caveat not to return till she brings an amount of Rs. 50,000/- from her father. Such state of affairs continued for several months and ultimately, petitioner 1 - husband took the

respondent 1 – wife and the child to Hinganghat, although the husband was serving at Power House at Nandori. It is deposed that respondent 1 - wife used to be left alone at Nandori and her husband used to be least bothered about the day to day needs of the family. The ill-treatment continued, so much so, that even when the wife fell ill, she was assaulted. Several other instances are narrated in the evidence. I have perused the cross-examination of respondent 1 – wife. The cross-examination essentially is a bundle of suggestions given. I am satisfied that the cross-examination does nothing to dilute the credibility of the deposition of the wife.

10. Mr. Rai would emphasize on an observation in the judgment of the learned appellate Court which is to the effect that it is a matter on record on 4-9-2017, wife lodged report at police station. Mr. Rai would submit that the observation is factually incorrect. Since the entire record is not available, it would not be possible to make any definite observation. However, even if, Mr. Rai is right in the submission, one mistake here and there does not render a judicial order vulnerable to interference in writ jurisdiction. I am more than satisfied that the appellate judgment is not vitiated by any grave

error, either legal or factual as would justify invoking writ jurisdiction.

11. The petition is *sans* merit and is dismissed.

12. The Registry shall forward copy of this order to respondent 1 within the next seven days.

JUDGE

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