

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

CRIMINAL APPLICATION (APL) NO.557 OF 2017

1. Kishor Bhimraoji Mahadik
Aged 44 years, Occ: Service.
2. Sau. Mandabai Bhimraoji Mahadik
Aged 64 years, Occ: Household.
3. Sau. Vidhya Ravindra Sontakke
Aged 36 years, Occ: Shipai/Chapراسي.
4. Ravindra Narayanrao Sontakke
Aged 44 years, Occ: Business.

All R/o Near Indrashesh Baba Temple,
Wadali, Amravati,
Tq. & Dist. Amravati.

..... **APPLICANTS**

...VERSUS...

1. Sau. Nutan Kishor Mahadik
Aged 37 years, Occ: Household
C/o Rahul Dhanraji Nannaware,
R/o Thakur Layout, Gajraj Nagar,
Near Krushna Mandir, Old Bye-pass Road,
Amravati, Tq. & Dist. Amravati.
(Police Station Rajapeth, Amravati.)
2. State of Maharashtra through
Police Station Officer,
Police Station Frezarpura,
Amravati, Tq. & Dist. Amravati.

..... **RESPONDENTS**

Mr. C.A. Babrekar, Advocate for Applicants.
Mr. S.S. Patil, Advocate for Respondent 1.
Ms. T.H. Udeshi, APP for Respondent 2/State.

CORAM: **ROHIT B. DEO, J.**
DATE: **21st JUNE, 2021.**

ORAL JUDGMENT:

Heard Mr. C.A. Babrekar, the learned Counsel for the applicants, Mr. S.S. Patil, the learned Counsel for respondent 1 and Ms. T.H. Udeshi, the learned Additional Public Prosecutor for respondent 2/State.

2. This application is styled as an application under Section 482 read with Section 401 of the Criminal Procedure Code, 1973 (Code) and the challenge is to the judgment dated 01.07.2017 rendered by Additional Sessions Judge, Amravati in Criminal Appeal 158/2016 whereby the judgment dated 14.10.2016 rendered by the Judicial Magistrate First Class, Court 5, Amravati in Miscellaneous Criminal Case 166/2013, is set aside.

3. Respondent 1 Smt. Nutan and applicant 1 Mr. Kishor entered into matrimonial alliance on 27.05.2003. Mayur is the

child born from the wedlock, on 19.04.2005.

4. Smt. Nutan alleged that she was ill-treated by Mr. Kishor and the members of her matrimonial family, in order to pressurize her to bring gold ornaments and cash from her parents. Smt. Nutan alleged that she was compelled, due to the cruelty to which she was subjected, to reside with her parents and that Mr. Kishor failed to provide maintenance. Smt. Nutan, on such allegations, invoked the provisions of the Protection of Women from Domestic Violence Act, 2005 (DV Act) and preferred Miscellaneous Criminal Case 166/2013 seeking reliefs under Sections 18 to 22 thereof.

5. Mr. Kishor, and the other respondents filed a joint reply denying the allegations. Mr. Kishor further contended that his salary of Rs.11,360/- per month leaves no room to pay maintenance.

6. Smt. Nutan examined herself and Mr. Atul and Mr. Ramesh in support of the allegations and additionally relied on the documentary material placed on record. Mr. Kishor examined himself and produced on record his salary certificate for the

month of January, 2016.

7. The learned Magistrate rejected the application on the ground that the *inter se* disputes are trivial in nature and do not constitute domestic violence.

8. Smt. Nutan preferred Criminal Appeal 158/2016, which, as noted *supra* is allowed by the Additional Sessions Judge, Amravati vide judgment dated 01.07.2017.

9. The Appellate Court, re-appreciated the evidence on record, and recorded a finding of fact that Smt. Nutan did prove domestic violence. The Appellate Court noted the provisions of the DV Act and held that the use of pinching language, refusal to maintain etc. do constitute domestic violence, and that the learned Magistrate failed to appreciate the evidence on record in the context of the statutory provisions. Adverting to the entitlement and quantum of maintenance, the Appellate Court held that Smt. Nutan was not in a position to maintain herself and that the salary certificate placed on record in appeal, pertaining to April 2017, disclosed the salary of Mr. Kishor as Rs.16,931/- and that too, after deductions. The Appellate Court directed Mr. Kishor to

pay Smt. Nutan monthly maintenance of Rs.4000/- from the date of the appellate order and to pay litigation expenses of Rs.2000/-. The Appellate Court further granted Smt. Nutan visitation rights, since the custody of the child Mayur is with Mr. Kishor.

10. Mr. Babrekar would submit that the learned Appellate Court failed to consider the material on record and rendered an erroneous judgment. In my considered view, the appreciation of material on record by the Appellate Court does not suffer from any infirmity. Inherent powers, or for that matter revisional power of the High Court must be sparingly exercised and it would be impermissible to interfere with a finding of fact based on appreciation of evidence unless the High Court is satisfied that a grave miscarriage of justice has occasioned by either, a serious error of law or perversity or defect of like nature. Nothing is brought to my notice to warrant interference in the finding of fact recorded by the Appellate Court.

11. In so far as the quantum of maintenance is concerned, the monthly maintenance of Rs.4000/- is most reasonable. The maintenance is awarded not from the date of the application but from the date of the appellate order. However, since there

does not appear to be a challenge mounted by Smt. Nutan to the date of giving effect to the order, this aspect need not detain the court.

12. Mr. Babrekar then contends that vide order dated 27.03.2017, the learned Judge of the Family Court, Amravati rejected a separate application preferred by Smt. Nutan under Section 125 of the Code on the ground that Smt. Nutan failed to prove cruelty and she voluntarily left the company of Mr. Kishor.

13. The Appellate Court, in exercise of power under Section 29 of the DV Act, has rendered a finding based on evidence on record. It does not appear, from the judgment of the Appellate Court, that the order dated 27.03.2017 rendered by the Judge, Family Court, Amravati was relied upon or for that matter brought to the notice of the Appellate Court, by Mr. Kishor.

14. In any event, considering the evidence on record in the proceedings under the DV Act, which is recorded much prior to the subsequent order in proceedings under Section 125 of the Code, this Court is not inclined to interfere with the view of the Appellate Court, which is based on the evidence before the

Appellate Court.

15. No case is made out to invoke either inherent or revisional powers of the Court.

16. The application is dismissed.

JUDGE

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