

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

CRIMINAL WRIT PETITION NO.1062 OF 2018

1. Sandeep Bhimraoji Solanki,
Aged about 31 years,
Occu. Private service.
2. Sau. Anita Bhimraoji Solanki,
Aged about 60 years,
Occu. Household.
3. Ku. Sonu Bhimraoji Solanki,
Aged about 21 years,
Occu. Private service.
4. Ku. Mohini Bhimraoji Solanki,
Aged about 19 years,
Occu. Private service.

Applicant's no. 1 to 4 all
R/o Plot No. 7, Punapur Road,
Near Kajal Bar, Bhawani Nagar,
Pardi, Nagpur.

5. Sau. Kavita Rajesh Pawar
Aged about 35 years,
Occu. Household.
6. Rajesh Pundlik Pawar
Aged about 40 years,
Occu. Private Service.

Applicant's no. 5 and 6 both
R/o Rukmini Nagar, Hamalpura,
Dist. Amravati.

7. Arun Ganpat Pawar
Aged about 45 years,
Occu. business.

8. Kalapana Arun Pawar
Aged about 37 years,
Occu. Household

Applicant's no. 7 and 8 both
R/o Gulzar Peth, Chandurbazar,
Dist. Amravati. **PETITIONERS**

...VERSUS...

Mrs. Sheetal Sandeep Solanki,
Aged about 24 years, occu. Private job,
R/o C/o Kisanraoji Chavhan,
Chincholi (Digras), Taluka – Digras,
District – Yavatmal. **RESPONDENT**

Mr. R.K. Maheshwari, Advocate for Petitioners.
Mr. R.R. Rathod, Advocate for Respondent.

CORAM: **ROHIT B. DEO, J.**
DATE: **17th FEBRUARY, 2021.**

ORAL JUDGMENT:

The petitioners are assailing the judgment dated 26.04.2016 rendered by the learned Judicial Magistrate First Class, Court 2, Digras in Misc. Criminal Application 137/2015, whereby non-applicant Mrs. 'S' is awarded monthly maintenance of Rs.1500/- with effect from the date of the application under the provisions of the Protection of Women from Domestic Violence Act, 2005 (D.V. Act) and monthly rental compensation of Rs.1500/- and the judgment dated 09.08.2018 rendered by

learned Additional Sessions Judge, Darwha in Criminal Revision No.24/2016 whereby the challenge to the judgment of the learned Judicial Magistrate First Class is rejected.

2. The learned counsel for the petitioners Mr. R.K. Maheshwari submits that the petitioners 2 to 8 are roped in without any justification since there was no domestic relationship between the petitioners 2 to 8, particularly petitioners 5 to 8 who reside in Amravati and who irrefutably did not share common house hold with Mrs. 'S'. Mr. Maheshwari relies on the decision in *B. Balachandra Rao and another v. Sanjana Navneet Rao (Ms) and others 2019(1) Mh.L.J. (Cri.) 268* to buttress the said submission. Although the learned counsel for the respondent Mr. R.R. Rathod strenuously rebuts the said submission, considering the application under Section 12 of the D.V. Act holistically, the said submission deserves acceptance. To claim relief under Section 12 against a particular person, it is necessary to demonstrate that the claimant is an "aggrieved person". The claimant must prove that she was in a domestic relationship with the person/s against whom the relief is claimed, and that she was subjected to domestic violence. Perusal of the record reveals that the allegations are primarily against the petitioner 1 husband. I have perused the

evidence which is culled out by the learned Magistrate. The evidence against the petitioners 2 to 8 is extremely vague and general and the finding recorded by the learned Magistrate that all the non-applicants in the DV proceedings subjected Mrs. 'S' to domestic violence is clearly unsustainable. Notably, petitioners 5 and 8 and Mrs. 'P' irrefutably did not share a common house hold, and therefore, there was no domestic relationship in existence. Petitioners 2 and 3 are the parents-in-law and petitioner 4 the unmarried sister-in-law of Mrs. 'S'. In my considered view, to the extent of the aforesaid petitioners – original non-applicants 2 to 8 that the order of the learned Magistrate will have to be quashed.

3. In so far as the relief granted against the petitioner 1 husband is concerned, I do not see any reason to interfere in exercise of writ jurisdiction. Mr. Maheshwari would submit, *inter alia* relying on the decision in *Prakash Kumar Singhee v. Amrapali Singhee 2018 (5) Mh.L.J. 665* that the amount of maintenance must be fixed by striking a golden balance between the earning capacity of husband and the needs of wife and children. As a preposition of law, the submission is unexceptionable.

4. In the factual matrix, the amount of Rs.1500/- which is awarded by the learned Judicial Magistrate First Class as monthly maintenance is, in my considered opinion, not only reasonable, the same appears to be on the lower side, if at all. Be that as it may, since the wife does not appear to have sought enhancement, no further observation is necessary. Amount of Rs.1500/- per month may not be sufficient to ensure that the wife lives a dignified existence. Considering the costs of living, it is extremely doubtful whether the wife would be in a position even to meet the day-to-day needs with the amount of maintenance which is awarded.

5. The learned Judicial Magistrate First Class has indeed considered the evidence on record and has concluded that the applicant 1 – husband is in a position to earn Rs.15,000/- per month. The learned Magistrate has noted the previous work experience of the husband. Even according to the husband, he earns Rs.200/- per day while the learned Magistrate has not believed the said version of the husband. Even, if it is assumed *arguendo* that the monthly income of the husband is only Rs.6000/-, there is absolutely no error in awarding monthly maintenance of Rs.1500/- and monthly rent of Rs.1500/-.

The revisional Court, has considered the material on record afresh and has concurred with the view recorded by the learned Judicial Magistrate First Class. I do not find any error in the concurrent view, much less, an error as would impel me to exercise jurisdiction under Articles 226 or 227 of the Constitution of India or Section 482 of the Code of Criminal Procedure, 1973. A finding of fact as recorded, which finding is unexceptionable and it would not be permissible for this Court to act as an appellate Court and to re-appreciate the evidence on record.

6. The petition is dismissed subject to the clarification that the order of the learned Judicial Magistrate First Class shall be enforceable only against the petitioner 1 – husband.

JUDGE