

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

CRIMINAL WRIT PETITION NO. 863 OF 2021

Ashwini Sachin Ugle

.. Petitioner

Versus

Sachin Prabhakar Ugle and others

.. Respondents

Mr. Bibhishan R. Jaybhay, Advocate for the Petitioner.

CORAM : KISHORE C. SANT, J.

DATED : 08th DECEMBER, 2022.

P C. :-

1. Heard learned advocate for the petitioner.
2. Learned advocate for the petitioner submits that the petitioner-wife who has filed proceedings under the Protection of Women From Domestic Violence Act (for short "D.V. Act") bearing P.W.D.V.A. No. 374/2019 in the Court of learned Judicial Magistrate First Class, Aurangabad in which learned J.M.F.C. directed to pay her an amount of Rs. 5,000/- (Rs. Five Thousand only) per month. However, the learned Sessions Court in appeal has reversed the order passed by the learned J.M.F.C. vide judgment and order dated 23.06.2021 in P.W.D.V.A. No. 23/2020 holding that the leaned J.M.F.C. has not considered the aspect that wife was having license to run medical shop and thus, she

was able to earn money by doing business. It is further observed that there is no proof of income of the husband except a statement that he is earning salary of Rs. 32,000/ (Rs. Thirty Two Thousand only) and he is also having 10 acres of land and further he is getting rent of Rs. 16,000/- (Rs. Sixteen Thousand only) from house property. The respondent-husband had produced before the learned Magistrate that his income was only Rs. 12,874/- (Rs. Twelve Thousand Eight Hundred Seventy Four only). It is the submission of the petitioner that the learned Trial Court has rightly considered the issue and has passed an order by giving proper reasons. He relies upon the judgments of the Hon'ble Apex Court in the cases of (i) Shailja and another Vs. Khobbanna in Criminal Appeal Nos. 125-126 of 2017 dated 18.01.2017, (ii) Swapan Kumar Banarjee Vs. The State of West Bengal and others in Criminal Appeal Nos. 232-233 of 2015 dated 19.09.2019 and (iii) Chaturbhuj Vs. Sita Bai dated 27.11.2007 and states that it is not seen that whether wife is able to earn or not. What needs to be seen is that what she actually earns any income or not. In this case, learned Sessions Judge has taken hyper technical approach and has set aside the order passed by the learned J.M.F.C.

3. It needs to be considered that protection of women from Domestic Violence Act is a piece of beneficial legislation taking care of

weaker section in the society. When the provisions are specifically made to give benefit to women, the Court needs to keep that in mind. When there was an order passed by the learned J.M.F.C. by taking into consideration of these aspects, the learned Sessions Judge was not right in disturbing the order by adopting hyper technical approach more so, when the main proceeding is still pending and the order challenged before him was only an interim order.

4. It is reported that, the proceedings before the learned Trial Court are stayed in view of the order passed by this Court in Writ Petition No. 1116/2022 wherein, respondent-husband has prayed for clubbing of the proceedings filed under D. V. Act bearing P.W.D.V.A. No. 374/2019 which the wife has filed before the learned J.M.F.C., Aurangabad and proceedings in Cri. M. A. No 573/2022 which are pending before the learned Trial Court.

5. In view of this, the writ petition is allowed. The judgment and order passed by the learned Additional Sessions Judge dated 23.06.2021 in P.W.D.V.A. No. 23/2020 is quashed and set aside.

6. The writ petition is thus disposed off.

(KISHORE C. SANT, J.)

PS.B.