

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

957 CRIMINAL WRIT PETITION NO.998 OF 2022

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| 1. | Hussain Shaikhumar Inamdar,
Age-30 years, Occu- Business,
R/o. Raghuveer Nagar, S./ No.59/1/5
Len No. 4, Inamdar Manjil, Wadgaon,
(Sheri) Pune-14 | ...PETITIONERS |
| 2. | Shamshad Shaikhumar Inamdar,
Age-50 years, Occu-Service,
R/o. Raghuveer Nagar, S. No.59/1/5
Len NO. 4, Inamdar Manjil, Wadgaon,
(Sheri) Pune-14. | |

VERSUS

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| 1. | The State of Maharashtra | ...RESPONDENTS |
| 2. | Mahajabin Hussain @ Shafi Shaikhumar Inamdar
Age-27 years, Occu- Household,
R/o. Kazi Agalli, Naldurg
Tq. Tuljapur, Dist. Osmanabad | |
| 3. | Shaikhumar Latif Inamdar,
Age-55 years, Occu-Agri,
R/o. Raghuveer Nagar, S. No. 59/1/5
Len No. 4, Inamdar Manjil, Wadgaon,
(Sheri) Pune-14 | |
| 4. | Shahrukh Latif Inamdar,
Age-28 years, Occu- Agri,
R/o. Raghuveer Nagar, S. No. 59/1/5
Len No. 4, Inamdar Manjil, Wadgaon,
(Sheri) Pune-14 | |

5. Arbiya Manuja Shaharukh Inamdar,
Age-25 years, Occu-Household,
R/o. Raghuveer Nagar, S. No. 59/1/5
Len No. 4, Inamdar Manjil, Wadgaon,
(Sheri) Pune-14

Mr. Abhay Rathod, Advocate i/b Mr. Prithvi A. Rathod, Advocate
for the petitioners

Mr. V. B. Deshmukh, Advocate for the respondent No.2

Mr. Y. G. Gujrathi, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 09th DECEMBER, 2022

JUDGMENT

1. Rule. Rule made returnable forthwith, with the consent of the parties.

2. In this petition, the petitioner is challenging the order dated 06-05-2022 passed by the learned JMFC Tuljapur, Osmanabad at Exh. E arising out of proceeding under the Domestic Violence Act whereby learned JMFC allowed the interim application directing to hand over temporary custody of the child to the mother i.e. respondent No.2 alongwith the judgment and order dated 06-07-2022 dismissing the appeal preferred by the petitioners at Exh. F passed by the leaned

Sessions Judge, Osmanabad. (hereinafter the parties are referred to as per their designation in the present petition)

3. Undisputed facts are that marriage between petitioner No.1 and respondent No.2 took place in 28-12-2014 at Naldurga, Tq. Tuljapur, Dist. Osmanabad as per Muslim Rites. Husband is resident of Pune. Wife who was staying at Pune left home in 2014. The husband sent notice asking wife to come for cohabitation. For some period, she came and resided with the husband. However, again left the husband on 15-07-2021. She alone left the house, when child stayed with father. Again thereafter husband issued notice requesting wife to come for cohabitation. However, there was no response. At last husband-petitioner sent three notices seeking talak. First notice was issued on 29-09-2021, second on 29-10-2021 and third on 29-11-2021 and thus the marriage came to be terminated. In all these notices it is specifically mentioned that daughter Samiha is with her father i.e. petitioner No.1. He also informed in the notice that he will bear the expenses and he will maintain the

child.

4. For the first time the respondent No.2-wife filed a proceeding under Domestic Violence Act in the court of learned JMFC at Tuljapur. On 28-12-2021 she filed an application seeking custody below Exh.7 of daughter Samiha. Learned JMFC by considering judgments *reported in 2018 (2) All MR 182 in the case of Imran Khan Vs Sobiya Tabasdsun W/o. Imran Khan. Dr. Parijat Vinod Kanetkar VS Mrs. Malika Parijat Kanetkar* dated 21-12-2016 (Number of the proceeding is not given). This order came to be challenged by the petitioner No.1 in Criminal Appeal (D.V.) No. 8/2022 in the court of Additional Sessions Judge at Osmanabad. the learned Additional Sessions Judge though initially had granted stay to the order passed by the learned JMFC, finally rejected the appeal by order dated 06-07-2022. The learned Sessions Judge while passing the order has considered the judgment in the case of *Imran Khan Vs Sobiya Tabassum W/o. Imran Khan reported in 2018(2) ALL MR* and also relied upon the judgment in the case of *Swapnil*

Bhajandas Kamble Vs Sau. Manisha Swapnil Kamble in Criminal Writ Petition No.52/2022 dated 17-06-2022.

5. Question before this court in the proceeding is whether it would be proper to temporarily direct to petitioner No.1 to handover the custody of the child to the wife pending main proceeding before the learned JMFC. In this case, admittedly the child is with petitioner No.1 father since June, 2011 and even prior to that when the respondent No.2-wife was there. When the respondent No.2-wife left the home, she left the home alone. After leaving the home, she filed an application for custody for the first time after seven months and sought custody of the child. Without going much into the merits of the matter, what requires to be considered is that welfare of the child. By now it is well settled that paramount consideration in the matter of custody of child is welfare of the child. In this case undisputedly the financial condition of the father is sound. The petitioner No.1-husband lives in the city like Pune. It is reported that the now the child is in KG in Pune a metropolitan city in

reputed institution whereas the respondent-wife is staying at Naldurga quite a smaller place compared to Pune. From the proceeding, it is seen that even wife stated that financial condition of the husband is well and her condition is not that good as she is staying with her parents. One more aspect is required to be seen from the notices which are produced on record for Talak that the child is staying with the petitioner all along.

6. Considering all these facts in this case, it is desirable to maintain the position as it is in respect of the custody of the child till the main proceeding is decided. Since the question of custody of child is involved, it would be desirable to request the learned trial court to decide the main proceeding i.e. PWDVA No.36/2021 pending before the JMFC, Tuljapur at the earliest and preferably within a period of six months from today. The parties to cooperate the court and not to seek any unnecessary adjournments. The criminal writ petition is disposed off. Rule is discharged.

[KISHORE C. SANT, J.]