

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

CRIMINAL WRIT PETITION NO.1636 OF 2019

Satish S/o Kondarao Deshmukh,
Age : 33 years, Occu.: Unemployed,
R/o. N9 K 69/6, Pavan Nagar, HUDCO,
Aurangabad

... Petitioner

Versus

1. Deepali W/o Satish Deshmukh
Age : 31 years, Occu.: Govt. Service,
2. Shubhanit S/o Satish Deshmukh
Age : 6 years (Minor), Occu. Education,
U/g. Deepali W/o Satish Deshmukh
(Mother)

Both R/o. At present
C/o. Jagannath Jagadale,
Plot No. 48, Aaisaheb Nagar,
Pisadevi Road, Harsul, Aurangabad

... Respondents

....

Mr. Fulchand R. Tandale, Advocate for the Petitioner
Mr. Hemant S. Surve, Advocate for Respondent Nos.1 and 2

....

CORAM : SHRIKANT D. KULKARNI, J.

RESERVED ON : 12 AUGUST, 2022

PRONOUNCED ON : 25 AUGUST, 2022

ORAL JUDGMENT :-

. The petitioner by invoking the writ jurisdiction, has challenged the order passed by the Additional Sessions Judge-6, Aurangabad in PWDV Appeal No. 176 of 2017 dated 31.08.2019.

2. The factual scenario giving rise to this petition in brief is as under.

3. The marriage between the petitioner and respondent No.1 was solemnized on 02.03.2012. Out of wedlock, son Shubhanit is born. At the time of pregnancy, respondent No.1 Deepali went to her paternal house. She came back to the matrimonial house after delivery, but was not allowed to stay in the matrimonial house. The matrimonial discord began in the month of December, 2014. Respondent No.1/wife filed a petition for restitution of conjugal rights on 23.03.2015. The petitioner/husband filed divorce petition. Respondent No.1 Deepali filed proceedings under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the D.V. Act" for the sake of convenience) and sought interim maintenance. The learned Judicial Magistrate, First Class, Aurangabad was pleased to reject the application for interim maintenance. Feeling aggrieved thereby, respondent No.1 Deepali filed an appeal under the D.V. Act. The learned Additional Sessions Judge-6, Aurangabad was pleased to partly allow the appeal and directed to the petitioner to pay interim maintenance @

7,000/- per month towards his contribution to the maintenance and education expenses of applicant No.2 from the date of filing of application dated 04.03.2017.

4. Heard Mr. F.R. Tandale, learned counsel for the petitioner and Mr. Hemant Surve, learned counsel for respondent Nos. 1 and 2.

5. Mr. Tandale, learned counsel for the petitioner vehemently submitted that the learned Magistrate after taking into consideration the facts of the case and documents on record was pleased to reject the application for interim maintenance. It is observed by the learned Magistrate that respondent No.1 Deepali is serving as a teacher and drawing salary, which is sufficient to maintain herself and her son. He submitted that the learned Additional Sessions Judge has committed an error in reversing the findings. The petitioner is now jobless. His financial position is not strong to pay interim maintenance of Rs.7,000/- per month towards his contribution for the maintenance and education expenses of his son.

6. Mr. Tandale, learned counsel for the petitioner invited my attention to the documents regarding poor financial condition of the petitioner. He submitted that the petitioner has resigned from the Cipla Pharmaceutical Company Ltd. Aurangabad due to matrimonial dispute and now serving in one medical shop. This aspect is completely overlooked by the learned Additional Sessions Judge. The impugned order of interim maintenance passed by the Additional Sessions Judge is bad in law and liable to be dismissed.

7. Mr. Tandale submitted that there is no finding whether respondent No.1 was subjected to domestic violence while passing the impugned order. As such, the impugned order is bad in law.

8. Mr. Tandale has placed his reliance on following two citations in support of his argument.

(i) ***Gurudas Sanvalo Naik Vs. Mrs. Saanvi Gurudas Naik*** reported in ***2018 ALL MR (Cri.) 2375***.

(ii) ***Smt.Ashmin Kashmiri Vs. Pushkar Kashmiri***
Criminal Revision No.223 of 2018 dated
04.07.2018 (Himachal Pradesh High Court).

9. Mr. Surve, learned counsel for respondent Nos.1 and 2 supported the impugned order passed by the learned Additional Sessions Judge in D.V. appeal. He submitted that the learned Additional Sessions Judge has considered the object of the D.V. Act, the status and earning capacity of both the sides while passing the impugned order. The learned Additional Sessions Judge has considered the aspect that respondent No.1 Deepali is serving as a teacher, and therefore, not awarded any interim maintenance in her favour. He pointed out that interim maintenance is awarded in favour of the son towards contribution to his maintenance and to meet out his educational expenses. He submitted that the impugned order does not require any interference by way of writ petition.

10. Having regard to the submissions of both the sides, I have gone through the impugned order and documents and papers produced by the petitioner and the reply affidavit filed by respondent No.1. The dispute is centered around with the amount of contribution to be paid by the petitioner towards education expenses and day to day needs of the son. It is important to note that the learned Additional Sessions Judge while passing the impugned order, in para 15, observed that

respondent No.1 is an employed person and drawing salary and denied interim maintenance to her. It is observed by the learned Additional Sessions Judge that the son is begotten out of wedlock. It is the joint responsibility of father and mother to raise their son. They have to satisfy educational expenses and day to day needs of their son for his upbringing. The observations made by the learned Additional Sessions Judge cannot be said to be erroneous. The learned Additional Sessions Judge has also considered the object of the D.V. Act while setting aside the order passed by the learned Magistrate. I do not see any apparent error on the part of the learned Additional Sessions Judge while upsetting the finding recorded by the learned Magistrate. There cannot be any dispute that in a proceedings filed under the D.V. Act, the Court is expected to record finding whether the party claiming relief is subjected to domestic violence as held by this court in case of ***Gurudas Sanvalo Naik Vs. Mrs. Saanvi Gurudas Naik*** (supra).

11. On going through the impugned judgment, it is evident that the learned Additional Sessions Judge has observed that petitioner being father and respondent No.1 mother, both are jointly responsible for upbringing and better education of

their son. Respondent No.1 has filed petition for restitution of conjugal rights and petitioner has filed divorce petition. Both are fighting for their legal rights. The son is the victim and most sufferer.

12. Now, coming to the quantum of interim maintenance determined by the Additional Sessions Judge. It appears from the record that the petitioner was previously serving in the Cipla Pharmaceutical Company Ltd. and drawing salary of Rs.32,000/- per month as per his contention. He seems to have resigned from the Cipla Pharmaceutical Company Ltd. for whatever may be the reason, he cannot deny the responsibility to look after his son by saying that he is in financial trouble and unable to contribute towards the education of his son. It is for the petitioner to make an arrangement for the education expenses of his son equally like his wife, though various proceedings are going on between the parties. Having regard to the status and earning capacity of both the sides and their standard of living, an amount of Rs.7,000/- per month determined by the learned Additional Sessions Judge towards contribution for the educational expenses and maintenance of his son cannot be said to be unreasonable. No interference is required. Both the

parties may file their statements on affidavit about their income, assets and liabilities if not filed earlier in D.V. Act proceedings to assist the trial court. The main application can be disposed of by the trial court by giving equal opportunity to both the sides to lead their evidence in support of their contentions. The impugned order for interim maintenance is interim arrangement in order to take care of respondent no.2/son.

13. Having regard to the above reasons and discussion, there is no merit in the writ petition.

ORDER

- (i) The criminal writ petition stands dismissed.
- (ii) No order as to costs.

**[SHRIKANT D. KULKARNI]
JUDGE**

S.P. Rane