

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

CRIMINAL WRIT PETITION NO. 139 OF 2023

**RAMESH S/O VASUDEO BHENDE
VERSUS
ARPITA W/O RAMESH BHENDE AND ORS.**

Mr. S. P. Joshi, Advocate for the petitioner

CORAM : R. M. JOSHI, J.

DATE : 2nd AUGUST, 2023

P.C. :-

1. This petition takes exception to the judgment and order dated 27/09/2021 passed by learned Sessions Judge, Nanded in Cri. Appeal No. 75/2021 raising challenge to the order dated 27/11/2018 of granting maintenance of Rs. 1500/- to each respondents in proceeding bearing PWDA No. 21/2018 filed under the provisions of Protection of Women from Domestic Violence Act, 2005 (for short 'DV' Act).

2. The petitioner is husband of respondent No.1 and father of minor respondent Nos. 2 and 3. Respondent No.1 filed proceeding under DV Act. In the said proceeding interim maintenance of Rs.1500/- was directed to be paid by present petitioner. An appeal was filed under Section 29 of DV Act, raising challenge to the said order, culminated in to dismissal thereof.

3. Learned counsel for the petitioner submits that the learned Magistrate has committed error in granting the maintenance of Rs.1500/- without appreciating the fact that there was no domestic violence proved by the respondent No.1. With regard to the order passed by the learned Sessions Judge, Nanded in Criminal Appeal No. 75/2021 it is contended that the Appellate Court failed to exercise its jurisdiction in proper perspective. Before the Appellate Court it was a contention of the petitioner herein that the order passed by the learned Magistrate was ex parte without hearing him. It is also claimed that the petitioner is physically handicapped person and without considering the said aspect order came to be passed granting interim maintenance.

4. There is no dispute about the fact that the petitioner is husband of respondent No.1 and the other respondents are his children. The order passed by the learned Magistrate is not final relief but by way of interim measures direction was issued to pay maintenance to the respondents herein. It is specifically observed by the learned Sessions Judge that the incident of domestic violence caused to the respondent No.1 herein on 21/11/2018 is preceded by similar such instances. There is specific allegation that she was driven out the house by husband and others. It is further held that petitioner herein is earning income from the landed property and is also maintaining another wife. Having regard to

these facts the learned Sessions Judge considered the ex party order of interim measure to be just and proper.

5. The case of the respondent No.1 about she being subjected to domestic violence by removal of her from the matrimonial home as well as causing economic abuse against her needs to be prima facie accepted. Section 20 of the DV Act provides for monetary reliefs wherein it is open for the Magistrate to grant relief of maintenance for the aggrieved person as well as her children. Section 23 of the DV Act empowers the Magistrate to pass interim and ex parte order. Section 23(2) of the DV Act if the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit.

6. In the facts and circumstances of the case as they appear from the impugned order the petitioner is maintaining second wife and has driven respondent No.1 from matrimonial home, thereby she is subjected to emotional and economic abuse. In such circumstances to prevent further economic abuse, learned Magistrate was well within his jurisdiction to pass ex parte order of interim maintenance.

Thus, the order passed by the learned Magistrate in the present case cannot be said to be without jurisdiction. Having regard to these facts there is no merit in the present petition, hence petition stands dismissed.

(R. M. JOSHI, J.)

ssp