

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

CRIMINAL WRIT PETITION NO. 1611 OF 2022

Pramod Shankarrao Sawant
and others

.. Petitioners

Versus

Sujata Pramod Sawant

.. Respondent

Mr. Dhananjay M. Shinde, Advocate for the Petitioners.
Mr. G. G. Suryawanshi, Advocate for Respondent.

CORAM : KISHORE C. SANT, J.

DATED : 20th APRIL, 2023.

P C. :-

. Heard.

2. This is a writ petition challenging the judgment and order dated 26.04.2022 passed by the learned Sessions Judge, Nanded in Criminal Appeal No. 32/2020 thereby dismissing the appeal. By way of impugned judgment and order, the order passed by the learned Joint J.M.F.C., Court No. 1, Nanded dated 04.08.2020 in P.W.D.V.A. No. 36/2015 is confirmed. The learned J.M.F.C. had allowed the application of respondent – wife and directed the petitioner – husband to pay an amount of Rs. 4,000/- (Rs. Four Thousand only) per month to the respondent - wife towards maintenance from the date of

application. The petitioners are further directed to pay Rs. 30,000/- (Rs. Thirty Thousand only) towards charges of the application.

3. The case of the respondent – wife is that, she was harassed by the petitioners and other in laws and therefore, she was constrained to file an application under the Protection of Women from Domestic Violence Act (for short “Domestic Violence Act”) for various reasons. Though she had prayed for maintenance of Rs. 15,000/- (Rs. Fifteen Thousand only) per month, the learned Trial Court had granted Rs. 4,000/- (Rs. Four Thousand only) per month. However, the wife did not carried the order passed by the learned J.M.F.C. in appeal and accepted the said order.

4. In this petition, it is the submission of learned advocate for the petitioner-husband that, earlier the respondent had filed petitions in learned Family Court under Section 9 of the Hindu Marriage Act bearing Petition No. A-66/2015 and under Section 18 of the Hindu Marriage Act bearing Petition No. C-08/2015. Both the petitions were disposed off by common judgment dated 24.10.2016. In the said judgment, the learned Judge, Family Court had granted Rs. 6,000/- (Rs. Six Thousand only) per month to the respondent towards maintenance by considering the income of the husband. In the said proceeding the husband had produced salary certificate showing his

income to be Rs. 18,500/-. The learned Family Judge therefore holding that 1/3rd of the salary would be proper amount of maintenance and directed to pay the said amount. Learned advocate for the petitioners submits that, thus, when the Civil Court has awarded maintenance by considering the income of the husband, there was no question of granting more and to enhance the amount of maintenance when there is nothing on record to show that the income of the husband is increased. He submits that, as a matter of fact, now the company in which he was working itself is closed and as on today he is jobless. He submits that, since 1/3rd amount is already granted to respondent, no direction was necessary in the petition under the Domestic Violence Act. He submits that, both the Courts below have failed to appreciate this vital aspect. Now, if the amount of Rs. 4,000/- (Rs. Four Thousand only) is directed in addition to Rs. 6,000/- (Rs. Six Thousand only), it would be more than 50% of the total income of the husband and for that reason also the application filed by the wife deserves to be dismissed.

5. It is the case of the wife that, now there is increase in income of the husband. It was for her to make averments to that effect and to produce on record salary certificate. The husband has filed salary certificate on record. The wife could not bring anything on record,

neither has disputed that certificate by any other evidence except mere statement that the income of the husband is more.

6. In various pronouncements now it is well settled that, the amount of maintenance should be 25-30% of the income of the husband. Therefore, this Court finds that, it ought to have been considered that the maintenance was already granted of Rs. 6,000/- (Rs. Six Thousand only) and that is sufficient considering the income of the husband. From the findings of the learned Court below this Court finds that, only discussion is that now the wife requires more amount considering that she has to pay house rent etc. The amount of maintenance as a whole is expected to be below $\frac{1}{3}^{\text{rd}}$ of total income of the husband. In such case, there is no reason for the learned Courts below to award Rs. 4,000/- (Rs. Four Thousand only) per month in addition to Rs. 6,000/- (Rs. Six Thousand only) which is already granted by the learned Family Court. The order to that effect passed by the learned Trial Court and confirmed by the learned Sessions Court needs to be quashed and set aside. However, the order directing to pay Rs. 30,000/- (Rs. Thirty Thousand only) towards compensation needs to be maintained as it is. Hence, the following order is passed.

7. The criminal writ petition is partly allowed.

8. The direction to pay Rs. 4,000/- (Rs. Four Thousand only) per month to the wife by the judgment and order dated 04.08.2020 passed by the learned Joint Judicial Magistrate First Class, Court No. 1, Nanded and confirmed by the learned Sessions Court in Criminal Appeal No. 32/2020 is quashed and set aside. The remaining part of the order is maintained as it is.

9. With this, the criminal writ petition stands disposed off.

(KISHORE C. SANT, J.)

P.S.B.