

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

CRIMINAL WRIT PETITION NO.1793 OF 2022

**HEMANT DHARMARAJ AADHE
VERSUS
DIPALI HEMANT ADHE AND ANOTHER**

Mr. N. K. Tungar, Advocate for the petitioner

Mr. R. b. Dhakne, Advocate for respondent Nos.1 and 2.

CORAM : R. M. JOSHI, J.

DATE : 25th JULY, 2023

P.C. :-

1. Admit. By consent of both sides heard finally.
2. This petition takes exception to the order dated 20/12/2021 passed in PWDV Application No. 279/2021 by learned JMFC, Aurangabad and order dated 05/11/2022 passed by the learned Addl. Sessions Judge, Aurangabad in PWDV Appeal No. 3/2022 and 19/2022.
3. It is a contention of the petitioner that both the Trial Court as the first Appellate Court have wrongly considered the evidence on record while granting the interim maintenance to the respondents. It is the contention of the petitioner that the respondent No.1 without any rhyme or reason has left the matrimonial home and therefore she is not entitled to get any maintenance. It is also contended that she is having

qualification of D.Pharm., and M.B.A. and that she is in the private service. According to the petitioner she has quarrel some nature and is a short tempered lady.

4. Learned counsel for the petitioner submits that the Trial Court as well as the Appellate Court have failed to take into consideration the income of the petitioner while deciding the quantum of maintenance. It is contended that without their being any additional ground made out by the respondent No.1 for enhancement of the maintenance, the Appellate Court committed error in enhancing the maintenance payable to respondent No.1 from Rs. 8000/- to 12000/- and for respondent No.2 from Rs.4000/- to 5000/-. It is his contention that the learned Trial Court as well as the Appellate Court ought to have been considered qualifications and ability of respondent No.1 to earn and maintain herself. By relying upon judgment of Madhya Pradesh High Court in case of **Smt. Mamta Jaiswal vs. Rajesh Jaiswal, II (2000) DMC 170** it is sought to be contended that the qualified wife cannot remain idle and seek maintenance from husband.

5. Learned counsel for the respondent supported the impugned orders.

6. The orders in question are passed under the provisions of The Protection of Women From Domestic Violence Act (for short 'DV Act'). Perusal of the application filed by the respondent before the learned Magistrate prima facie indicates that it is a case of economic abuse of these respondents as they are deprived of economic or financial resources which they are entitled under the law. Both parties are Hindus. Section 18 of The Hindu Adoptions and Maintenance Act mandates the husband to maintain the wife. Sub section 2 thereof entitles a wife to claim maintenance even in the event she is staying away from the husband. In such circumstances at this interim stage it is not necessary for the Court to go into the issue as to whether there is any justified reason for the wife not to reside in the matrimonial home.

7. Perusal of the order passed the learned Magistrate shows that on the basis of evidence placed on record by the respondent wife it is held that the petitioner is earning Rs.70,000/- per month. As against this petitioner was unable show any evidence in order to hold that the respondent No.1 is employed. Merely because respondent No.1 is qualified, it cannot be presumed that in all probabilities she will get employment. More particularly in the present time it is difficult for even over qualified persons to get an employment. In such circumstances, this Court does not concur with the view expressed by the Madhya Pradesh

High court in the judgment (cited supra). Apart from this the judgment is cited being not passed in case of DV Act, has no application to the present case.

8. As far as the judgment of the Appellate court is concerned, for the purpose of enhancement of the maintenance reasons are recorded in paragraph 19 of the judgment. There is nothing on record to indicate that the said reasoning recorded by the learned Appellate Court is perverse or contrary to the material evidence on record.

9. There are findings of two Courts below based on the correct appreciation of evidence. In the writ petition this Court cannot substitute the said findings unless they are perverse. In the circumstances there is no merit in the petition and hence petition stands dismissed.

(R. M. JOSHI, J.)

ssp