

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 577 OF 2022

RAMANUJ S/o GOPICHAND TIDAKE

..VERSUS..

SAU. DEEPIKA W/o RAMANUJ TIDAKE

WITH

CRIMINAL WRIT PETITION NO. 905 OF 2022

SAU. DEEPIKA W/o RAMANUJ TIDAKE

..VERSUS..

RAMANUJ S/o GOPICHAND TIDAKE AND TWO OTHERS

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Cri.W.P. No. 577/2022

Mr. Rajnish R. Vyas, Advocate for the petitioner.

Mr. Badal J. Lonare, Advocate for the respondent

Cri.W.P. No. 905/2022

M. Badal J. Lonare, Advocate for the petitioner.

Mr. Rajnish R. Vyas, Advocate for the respondent

CORAM : G. A. SANAP, J.

DATE : MARCH 29, 2023.

1. Both these petitions arise out of the order dated 13.07.2022, passed by the learned Sessions Judge, Gadchiroli in Criminal Appeal No. 13/2020 and therefore, they are being disposed of by this common order.

2. The petitioner in Criminal Writ Petition No. 577/2022 is the husband and the petitioner in Criminal Writ Petition No. 905/2022 is the wife.

3. Heard finally at the stage of admission itself.

4. The wife, in the year 2019, filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “the D.V. Act” for short) against the husband and his parents, which was registered as PWDV Application No. 10/2019. The application filed by the wife was allowed by learned Judicial Magistrate First Class, Desaiganj by order dated 29.09.2020. The husband and his parents did not participate in the said proceeding. The application, therefore, proceeded ex-parte against them.

5. The husband and his parents filed an appeal bearing PWDV Appeal No.13/2020 against the order of the learned Magistrate. The appeal was allowed by the learned Sessions Judge, Gadchiroli by his order dated 13.07.2022. Learned Sessions Judge set aside the order passed by the learned Magistrate and remanded the matter for re-trial before the Magistrate. Learned Sessions Judge, by order dated 13.07.2022 directed the husband to pay a sum of Rs.10,000/- per month to the wife from 16.09.2019 by way of interim maintenance.

6. The husband is aggrieved by this order of interim maintenance. The wife is aggrieved by the order of setting aside the order passed by the learned Magistrate.

7. I have heard Mr. R.R. Vyas, learned advocate for the husband and Mr. Badal J. Lonare, learned advocate for the

wife, in both the petitions. Perused the record and proceedings.

8. Learned advocate for the wife submitted that the notice was duly served upon the husband and his parents and therefore, the learned Sessions Judge was not right in setting aside the ex-parte order passed against them. Learned advocate submitted that learned Sessions Judge took liberal and sympathetic view. Learned advocate submitted that the approach of learned Sessions Judge is totally misplaced. It is submitted that the matter, which has been finally adjudicated upon after recording evidence, cannot be re-opened in this manner, unless and until there is satisfactory ground or reason.

9. Learned advocate for the husband submitted that the liberal view was taken by the learned Sessions Judge considering the facts and circumstances in totality. Learned advocate submitted that adjudication of the dispute in one round of litigation is necessary to avoid multiplicity of the proceeding. Learned advocate submitted that learned Sessions Judge has recorded the reasons for taking liberal view. Learned advocate further submitted that after setting aside the order of learned Magistrate in the appeal filed by the husband, learned Sessions Judge was not right in directing the husband to pay interim maintenance @ Rs.10,000/- per month.

10. In order to appreciate the rival submissions, I have

gone through the record and proceedings. Learned Sessions Judge found that the dispute between the parties being of matrimonial nature, adjudication of the same on merits is desirable and therefore, learned Sessions Judge took liberal view. The question is whether the facts and circumstances justified the liberal view and sympathetic approach.

11. On going through the record and proceeding and particularly, the reasons recorded by the learned Sessions Judge, I am of the view that the learned Sessions Judge was right in allowing the appeal. It is to be noted that adjudication of the matter on merits is always in the interest of both the parties. Adjudication of the matter on merits, by granting an opportunity to the parties, can with certainty avoid multiplicity of proceeding. At the same time, it provides a soothing relief to the losing party that before deciding the matter, he/she was heard and full opportunity was granted to defend the matter. It is necessary to state here that while deciding such issue, the Court has to avoid adhering strictly to the procedural technicalities. The approach of the Court must be such to subserve the cause of justice by deciding the matter after full fledged enquiry or trial. In this view of the matter, I am of the opinion that the approach of the learned Judge was consistent with the settled position. Therefore, the order passed by the learned Sessions Judge does not warrant interference.

12. It is to be noted that learned Sessions Judge has taken

care of the grievance of the wife by directing the husband to pay interim maintenance. The husband is aggrieved by this order. In my view, there is no substance in the appeal filed by the husband. On merits, the wife was found entitled to get maintenance. The situation was invited by the husband. Learned Sessions Judge granted opportunity to the husband and his parents and therefore, the grievance made by the husband is totally misplaced. The grievance, therefore, cannot be entertained. In the facts and circumstances, both the petitions are required to be dismissed.

13. Learned advocates for the parties submitted that the matter pending before the learned Magistrate may be expedited. In the facts and circumstances, learned Judicial Magistrate, First Class, Desaiganj, on whose file PWDV Application No. 10/2019 is pending, is requested to dispose of the matter expeditiously and in any case within a period of three months from today.

(G. A. SANAP, J.)

Diwale