

MHND010004142022



Presented on : 08-02-2022
Registered on : 08-02-2022
Decided on : 29-08-2024
Duration : Y M D

Exhibit No.

**IN THE COURT OF EXTRA JT. ADDL. SESSIONS JUDGE-1,
NANDED
(Presided Over by Shri Kokare R.V.)**

Cri.Appeal No.15/2022

1. Gopal Bhimrao Bondhare
Age: 36 years, Occupation : Labour
2. Bhimrao Babarao Bondhare
Age: 73 years, Occupation : Retired.
3. Sheshikala Bhimrao Bondhare
Age: 69 years, Occupation : Household,
4. Govind Bhimrao Bondhare
Age: 45 years, Occupation : Business
5. Savita Govind Bondhare
Age: 39 years, Occupation : Household
6. Kiran Anup Suryawanshi
Age: 28 years, Occupation : Household,

Appellant Nos. 1 to 5 are r/o Akhada Balapur,

Tq.Kalamnuri and appellant No.6
R/o Hardaf Tq. Hadgoan
Dist Nanded

..Appellants

VERSUS

1. Jayashree Gopal Bondhare
Age: 31 years, Occupation : Household,
r/o Irrigation Colony, Ardhapur
Tq Ardhapur Dist Nanded

2. Devraj Gopal Bondhare
Age: 4 years, Minor,

3. Mitali Gopal Bondhadre
Age: 4 years, Minor
under guardianship of
respondent No.1.

..Respondents

Appeal against judgment and order passed in Cri.M.A.No.
19/2017 on dated 09-03-2021 by Ld.J.M.F.C., Ardhapur

Appearances:-

Ld. Adv. D. B. Chandrawanshi for Appellants.
Ld. Adv. S. D.Ingle, for Respondents.

JUDGMENT
(Delivered on 29-08-2022)

1. Being aggrieved by the impugned judgment and order dated 09-03-2021 in Cri.M.A.No.19/2017, passed by the learned Judicial Magistrate, F.C. Ardhapur, wherein appellant/original respondent No.1 was directed to give

maintenance of Rs.7,000/- per month each to original Applicant Nos.1 to 3 i.e. present Respondent Nos.1 to 3. Hence, all the respondent Nos. 1 to 6 have preferred this appeal. (*The parties hereinafter referred to as their original status*).

2. The facts which raise to initiate application of original Applicant No.1 and this appeal in brief is as under:

Marriage of original Applicant No.1-Jaishri and original Respondent No.1 Gopal took place on 29-04-2007 at Goul Bazar, Tq. Kalamnuri Dist. Hingoli as per rites and customs. After marriage, Jaishri went to cohabit with Respondent Gopal at Goul Bazar, Tq. Kalamnuri. Respondent Nos. 2 to 6 are relatives of respondent No.1. In the marriage, father of applicant No.1 had given dowry of Rs.5 Lakh, 03 Tola gold and new clothes, utensils, TV, Freeze, Cooler, bed, almira, mixer and other household goods total worth Rs.2 lakhs and by spending Rs.5 lakhs he performed marriage of his daughter. For some days, Gopal and his family members treated her well. Thereafter, they started ill-treatment to her on petty grounds such as, demanded money for purchasing vehicle, to keep her in the room, starve her, beat her. So also, respondents told her that, since one year, she could not give birth of any child and therefore, they want divorce from her. After some time, she got pregnancy, but respondent Nos. 1 to

6 told her that, said child is not of respondent No.1. On that count also, they started to harass her, abuse and beat her on 25-04-2017. She told the said fact to the members of her parental house.

3. She further submitted that, thereafter, on 26-04-2017, her uncle Manchakrao Ingle, maternal uncle Uttamrao Kadam, panch Sanjay Bondhare, Babaseth, Marotrao Mudhol, Madhavrao Survashe came to her house and they gave understanding to respondent No.1, but, in front of them, respondents told that, said child is not of respondent No.1 and if she denied to give divorce, then they will kill her. Therefore, they took applicant to her parental house. Then also, respondent No.1 came to her parental house and beat her and her mother, given abuses and asked to sign on the papers of divorce. Thereafter, on 26-06-2017 applicant gave birth of twin child. On 21-07-2017 respondent No.1 came to her parental house, beat her, gave abuses forcibly taken her to his house by car. At that time, respondent No.1 ill-treated her and demanded Rs.5 lakhs for purchasing tractor and told to her that, she should not return back to their house without money. Thereafter, in the evening time respondent No.1 left her in the parental house. Therefore, on 22-07-2017 she lodged the complaint against the respondent under Sections 498-A, 323, 504, 506 r.w.34 of IPC vide crime No.209/2017

at police station, Ardhapur.

4. Further contention of Applicant No.1 is that, she has no income source she has to depend on her parents to maintain herself and her children. Respondent No.1 is residing in the joint family and he had movable and immovable property there. So also, they are having business of stone crusher and getting monthly income of Rs.70,000/- per month. Respondent No.2 also having business of Hardware and getting income of Rs.70,000/- per month. Thus, she demanded Rs.12 Lakh on account of her mental, physical torture and also demanded share in the joint family of respondents. Further, she submitted that, respondents should not transfer any property to anyone and for the said purpose, she prayed to restrain them from doing so. Lastly, she prayed to grant Rs.10,000/- per month to each applicants i.e. rs.30,000/- per month maintenance.

5. Respondent No.1 Gopal appeared through his Ld. Advocate and denied the contentions of Applicant No.1 Jaishri. He submitted that, he and his wife are residing separately, he had not harassed her. He is ready to cohabit applicants and by denying all the allegations, prayed to reject the application.

6. After hearing both ld. Counsel for the applicant and respondent, the Ld. Trial court passed judgment and order dated 09-03-2021 and directed Respondent No.1 to pay maintenance of Rs.7,000/- each to Applicant Nos.1 to 3 from the date of filing application. Hence, being aggrieved, Respondents i.e. present Appellants have filed this appeal on various grounds as under -

7. That, the Judgment and order passed by the Ld.J.M.F.C., Ardhapur is wrong and erroneous. The Ld. Magistrate failed to appreciate oral and documentary evidence in its proper perspective and has unnecessarily prejudiced against the Appellants/ori. Respondents. The whole approach of the Magistrate is from wrong angle. Ld. Magistrate has erred while considering the income of the appellant No.1 and granted exorbitant maintenance to Lastly prayed, order of Ld. Trial court needs interference and liable to set aside.

8. Heard the arguments of Ld.Adv.for applicants and respondents at length.

9. In the light of aforesaid facts, arguments advanced by Ld. advocates of both parties and on perusing record, following points emerged for determination and I have

recorded my findings thereon for the reason stated below.

	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether applicant is the victim under Protection of Women from Domestic Violence Act ?	<u>Yes</u>
2.	Whether order passed by Ld. Trial court is just and proper ?	<u>Yes</u>
3.	Whether interference of this court is warranted interference into the judgment and order passed by Ld.trial court ?	<u>No</u>
4.	What order ?	<u>As per final order.</u>

REASONS

As to point Nos.1 to 3 :-

10. For the sake of convenience and being interlinked all points, and to avoid the repetition of facts and evidence, I took all these points simultaneously for discussion.

11. Alongwith this appeal, Appellant Gopal produced the copy of judgment in RCC No.31/2017 under Section 498-A, 323, 504, 506 r.w. 34 of the Indian Penal Code, in which he has been acquitted from the aforesaid charges. Per contra, respondent has filed copy of judgment given by Civil Judge, S.D. Hingoli in Hindu Marriage Petition No.38/2021 under Section 13 of the Hindu Marriage Act, 1955 filed by

respondent No.1 Gopalkrushna for divorce, in which his prayed for divorce is rejected and it is held therein that, the petition for divorce filed by respondent No.1 is false and bogus. Both parties have filed the documents and various judgments and order passed by various Court.

12. On perusal of all the above judgments and order of various Courts and facts admitted by both the sides i.e. marriage of applicant No.1 and respondent No.1, she is residing with her parental house since 22-07-2017 along with her two children.

13. Ld. Trial Court has appreciated evidence adduced by the applicant No.1 by way of her affidavit at Exh.12, in which, she has proved the documents i.e. report filed by applicant No.1 under Section 498-A of IPC and medical documents Sr.No.1 to 59 at Sr.No. 15/1 to 15/59 they are marked as Exh.19 to 77. In this context, in the cross-examination by ld. Advocate for respondent No.1, he has not denied their business and income and only he put question that, he has no ability to give Rs.12 Lakhs to applicant.

14. I have gone through the evidence of applicant No.1 and judgment passed by Ld.Trial court and found that, though, applicant has not filed any documents to prove the income of

the respondent No.1 and his family, but the trial Court granted the reasonable maintenance amount of Rs.7,000/- per month to each applicant i.e. total Rs.21,000/- per month considering the status of applicant, today's inflation and the children depending on the wife, their education. From the evidence of applicant No.1, she has proved that, respondent No.1 has neglected to maintain her and children, who has sufficient means to maintain them. The burden is on the respondent No.1 to prove that, he has no sufficient means of income to maintain his wife and children, which is his responsibility. The respondent No.1 has not rebutted the said burden by adducing any cogent and convincing evidence in support of his contention. Hence, I do not find any justifiable reason to interfere into the order of Ld.Trial court.

14. Therefore, I think, the Ld. Trial Court has considered the material before him, after considering all the evidence and documents on record came to right conclusion and granted Rs.7000/- per month each i.e. Rs.21,000/- per month to applicant Nos. 1 to 3 which is just and proper to meet the ends of justice. Hence, I answer point No. 1 to 3 accordingly and in answer to point No. 4, I pass following order.

ORDER

1.	The Criminal Appeal No.15/2022 is hereby dismissed.
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2.	The impugned judgment passed in Cri.M.A. No.19/2017 on dated 09-03-2021 by Ld.J.M.F.C. Ardhapur is hereby confirmed.
3.	R & P be sent to Ld.Trial Court.
	Judgment is dictated and pronounced in open Court.

(R. V. Kokare)

Date :- 29-08-2024

Extra Jt.Addl. Sessions Judge-1,
Nanded.

CERTIFICATE

I affirm that the contents of this PDF file order are same, word to word, as per the original order.

Name of stenographer	Balkrishna Kulkarni
Name of Court	Extra Jt. Addl. Sessions Judge-1, Nanded
Date of Dictation	29-08-2024
Order signed by the P.O on	30-08-2024
Order uploaded on	30-08-2024