

Received on	11/03/2025
Registered on	11/03/2025
Decided on	01/07/2026
Duration	YY MM DD 01 03 18

IN THE COURT OF 7th ADDITIONAL DISTRICT**JUDGE, AT JETPUR, RAJKOT****Criminal Appeal No. 17/2025****Exhibit-****1. Yogeshbhai Kantilal Dhadiya,**

Age-43, Occ. Business,

2. Kantibhai Bhurabhai Dhadiya,

Age-63, Occ. Retired,

3. Manjulaben Kantibhai Dhadiya,

Age-58, Occ. Housewife,

4. Arvindbhai Kantilal Dhadiya,

Age-58, Occ. Business,

Residing 1 to 4 at:- Valasimdi, Tal, Dist- Junagadh.

5. Jagrutiben Dineshbhai Kumbhani,

Age-48, Occ. Housewife,

Res.at- Nr. Sardarpara Police Choki, Joshipara,

Junagadh.

...Appellants**Versus****1. Kristalben Yogeshbhai Dhadiya,**

Age- 32, Occ.Housewife,

2. Kavyaben Yogeshbhai Dhadiya,

Age- 11, Occ. Study,

Residing both at- Mevasa, Tal- Jetpur, Dist- Rajkot.

...Respondents

Appearance:

Ld.Adv. Ms.S.B. Joshi for the Appellants

Ld.Adv. Mr.Y.G. Domadiya for the Respondents.

**Appeal under Section 29 of the Protection of
Women from Domestic Violence Act, 2005
Against Judgment of Cr. M.A. No. 68/2024**

-:: J U D G M E N T ::-

1. The present appeal has been preferred by the original opponents/Appellants under Section 29 of the Protection of Women from Domestic Violence Act, 2005, challenging the judgment and order dated 01.02.2025 passed by the learned Additional Chief Judicial Magistrate, Jetpur in Criminal Miscellaneous Application No.68 of 2024, whereby the learned Magistrate has partly allowed the application preferred by the original applicants/Respondents under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and granted monetary relief and residence expenses in favour of the applicants.
2. For the sake of convenience, the parties are hereinafter referred to as per their original status before the learned trial Court.
3. The brief facts giving rise to the present appeal are that the respondents-original applicants instituted

Criminal Miscellaneous Application No.68 of 2024 before the learned Additional Chief Judicial Magistrate, Jetpur under Section 12 of the Protection of Women from Domestic Violence Act, 2005, inter alia, contending that respondent No.1 is the legally wedded wife of original opponent No.1 and respondent No.2 is their minor daughter born out of the wedlock. It was further pleaded that original opponents Nos.2 and 3 are the parents of opponent No.1, opponent No.4 is his brother and opponent No.5 is his sister.

4. The case of the original applicants before the learned Magistrate was that after the marriage, respondent No.1 was subjected to continuous physical, mental, emotional and economic cruelty at the hands of the original opponents. It was alleged that original opponent No.1 had induced respondent No.1 to marry him by making false representations regarding his financial status and business and that after marriage she came to know that such representations were false. It was further alleged that original opponent No.1 was addicted to intoxicating substances, frequently assaulted respondent No.1 and maintained an illicit relationship with another woman, thereby causing continuous mental cruelty.
5. It was further alleged that the other original opponents actively participated in subjecting

respondent No.1 to harassment by abusing her, demanding dowry, instigating original opponent No.1 to assault her and ultimately driving her and the minor daughter out of the matrimonial home. According to the applicants, despite an earlier assurance given by the husband to maintain respondent No.1 properly, the acts of domestic violence continued, compelling the applicants to reside separately at the parental house of respondent No.1.

6. It was further pleaded before the learned Magistrate that the original opponents possessed sufficient financial means from agriculture, business and pension, whereas respondent No.1 had no independent source of livelihood and was unable to maintain herself and the minor daughter. On the basis of the aforesaid averments, the applicants prayed for protection orders under Section 18, residence orders under Section 19, monetary relief under Section 20, compensation under Section 22 and interim as well as consequential reliefs under the provisions of the Protection of Women from Domestic Violence Act, 2005.
7. After appreciating the unrebutted oral and documentary evidence adduced by the original applicant No.1, the learned trial Magistrate came to the conclusion that although the applicants had

failed to produce satisfactory evidence to justify grant of protection order under Section 18, compensation under Section 22 and certain other reliefs claimed in the application, the relationship between the parties as husband and wife and the fact that the applicants were residing separately from original opponent No.1 stood established. The learned Magistrate further observed that original opponent No.1, being the husband of applicant No.1 and father of applicant No.2, was under a statutory, legal and moral obligation to maintain them. Considering the financial and social status of the parties and the material available on record, the learned Magistrate partly allowed the application and directed original opponent No.1 to pay monthly maintenance of Rs.5,000/- to applicant No.1 and Rs.4,000/- to applicant No.2, aggregating to Rs.9,000/- per month from the date of the application. The learned Magistrate further awarded Rs.1,000/- per month towards residence expenses and Rs.500/- towards litigation costs, while rejecting the remaining reliefs claimed by the applicants. Being dissatisfied and aggrieved by the said judgment and order, the original opponents have preferred the present appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005.

8. Grounds of Appeal

8.1 The impugned judgment and order dated 01.02.2025 passed by the learned Additional Chief Judicial Magistrate, Jetpur is contrary to law, contrary to the facts and evidence on record and is therefore liable to be quashed and set aside.

8.2 The learned trial Court has committed a grave error in proceeding ex parte against the appellants without ensuring that the notice of the proceedings was duly and validly served upon them in accordance with law. The impugned judgment has thus been passed in gross violation of the mandatory principles of natural justice.

8.3 The learned Magistrate failed to appreciate that service of notice upon the respondents/opponents is a condition precedent before adjudicating an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005. Unless proper service is effected, the Court cannot legally proceed to decide the matter ex parte.

8.4 The learned trial Court has mechanically recorded that notice was served without verifying whether the service was lawful, valid and complete. No judicial satisfaction has been recorded regarding due service of notice upon each of the appellants before directing the matter to proceed ex parte.

8.5 The appellants submit that they were never served with any notice or summons of the proceedings before the learned trial Court. Consequently, they had no knowledge of the pendency of the application and therefore had no opportunity to appear before the Court, file their reply or contest the allegations made by the respondents.

8.6 The learned Magistrate failed to verify the mode, manner and legality of the alleged service of notice before closing the appellants' right to file their written statement and proceeding ex parte. The procedure adopted by the learned Magistrate is contrary to the provisions of law governing service of summons and the procedure contemplated under the Protection of Women from Domestic Violence Act, 2005.

8.7 The learned trial Court ought to have satisfied itself that the appellants had actual or deemed notice of the proceedings before depriving them of their valuable right of hearing. The impugned order, having been passed without affording an effective opportunity of hearing, is liable to be set aside solely on this ground.

8.8 The proceedings before the learned trial Court are vitiated by violation of the maxim audi alteram partem, which mandates that no person shall be condemned unheard. The impugned judgment is

therefore violative of the principles of natural justice and cannot be sustained in the eye of law.

8.9 Had the appellants been duly served and afforded an opportunity of hearing, they would have appeared before the learned Magistrate, filed their written objections, cross-examined the respondent and produced documentary as well as oral evidence in support of their defence. The denial of such opportunity has resulted in serious prejudice to the appellants.

8.10 The findings recorded by the learned Magistrate are based solely upon the untested and unchallenged affidavit of the respondent, as the appellants were deprived of their statutory right to contest the proceedings. Such findings cannot be treated as conclusive and deserve to be set aside.

8.11 The impugned judgment and order, having been passed in breach of the mandatory requirement of due service of notice and in violation of the principles of natural justice, is illegal, arbitrary and unsustainable in law and deserves to be quashed and set aside by remanding the matter to the learned trial Court for fresh adjudication after providing the appellants with a full and effective opportunity of hearing.

8.12 The appellants crave leave to urge such other and further grounds at the time of hearing of the appeal as may be found necessary.

9. Upon issuance of notice of the present appeal, the original applicants/Respondents appeared through their learned advocate. The record and proceedings of Criminal Miscellaneous Application No.68 of 2024 were called for and received from the trial Court. I have heard the learned advocates appearing for the respective parties at length and have carefully gone through the impugned judgment, the oral and documentary evidence produced before the trial Court and the entire record of the case.
10. Upon hearing the learned advocates for the respective parties and considering the material available on record, the following points arise for determination in the present appeal:
 1. Whether the learned trial Magistrate committed an error in proceeding ex parte against the original opponents without ensuring due and proper service of notice upon them in accordance with law?
 2. Whether the impugned judgment and order dated 01.02.2025 is vitiated for violation of the principles of natural justice on account of denial of a reasonable opportunity of hearing to the appellants?
 3. Whether the impugned judgment and order passed by the learned Additional Chief Judicial Magistrate, Jetpur in Criminal Miscellaneous Application No.68 of 2024 suffers from any

illegality, impropriety or perversity warranting interference by this Appellate Court under Section 29 of the Protection of Women from Domestic Violence Act, 2005?

4. What order?

11. My findings on the aforesaid points are as under :

1. In the affirmative.

2. In the affirmative.

3. In the affirmative.

4. As per final order.

Findings Regarding Appreciation of Evidence by the Trial Court

12. After considering the affidavit filed by the original applicant and the documentary evidence produced on record, The learned trial Magistrate has partly allowed the application primarily on the premise that original opponent No.1, being the husband of applicant No.1 and father of applicant No.2, is under a legal obligation to maintain them. However, while determining the quantum of monetary relief under Section 20 of the Protection of Women from Domestic Violence Act, 2005, the learned Magistrate has not recorded any specific finding regarding the actual income, earning capacity or financial resources of original opponent No.1.

13. Though the applicants alleged that the opponents owned agricultural lands and were financially well-off, no documentary evidence was produced to substantiate such allegations. Significantly, the applicants did not produce the revenue record, such as Village Form Nos. 7/12 or 8-A extracts or any other land revenue documents, to establish either the ownership, extent or cultivation of the alleged agricultural lands belonging to the opponents. Likewise, no evidence regarding the nature of crops, agricultural yield, annual agricultural income or any income derived therefrom was placed on record.
14. Apart from the bald assertions made in the application and the affidavit of applicant No.1, no independent documentary evidence, such as income-tax returns, bank statements, business records, licence documents, books of accounts, pension records or any other reliable material, was produced to establish the income of original opponent No.1. In the absence of such evidence, there was no factual basis available before the learned Magistrate to assess the financial capacity of original opponent No.1.
15. The impugned judgment is also conspicuously silent as to the approximate monthly or annual income of original opponent No.1. No finding has been recorded regarding his occupation, earning

capacity or actual source of income. Furthermore, the learned Magistrate has not disclosed the basis or the criteria adopted for quantifying the maintenance at Rs.5,000/- per month to applicant No.1, Rs.4,000/- per month to applicant No.2 and Rs.1,000/- per month towards residence expenses.

16. It is a settled principle of law that while awarding monetary relief or maintenance, the Court is required to consider the income and financial capacity of the respondent, the reasonable needs of the aggrieved person, the standard of living enjoyed during the subsistence of the matrimonial relationship and other relevant circumstances. The exercise of determining the quantum of maintenance cannot be based on mere conjectures or presumptions but must be supported by reasons founded upon the evidence available on record.
17. In the present case, the learned trial Magistrate has awarded the monetary relief without recording any reasoned finding regarding the income of original opponent No.1 or explaining the basis on which the quantum of maintenance and residence expenses has been determined. The absence of such findings renders the determination of monetary relief unsatisfactory and legally vulnerable.
18. Though the learned trial Court has partly allowed the application under Section 20 of the Protection

of Women from Domestic Violence Act, 2005, it has not recorded a clear and categorical finding, based upon appreciation of evidence, as to which specific acts of domestic violence, as defined under Section 3 of the Act, stood proved against original opponent No.1. Before granting relief under the Act, the Court is required to record its satisfaction regarding the existence of domestic violence on the basis of legally admissible evidence.

Findings and Reasons

Point Nos.1 to 3:-

19. These points are taken up together as they are interconnected and involve common questions of fact and law.
20. The learned advocate appearing for the appellants has vehemently submitted that the impugned judgment and order has been passed in gross violation of the principles of natural justice. It is contended that the learned trial Magistrate proceeded ex parte against the appellants without ensuring due service of notice and thereby deprived the appellants of their valuable right to file a reply, cross-examine the applicant and adduce evidence in defence. It is, therefore, submitted that the impugned judgment deserves to be set aside and the matter deserves to be remanded for fresh adjudication.

21. Per contra, the learned advocate appearing for the respondents has supported the impugned judgment and has submitted that sufficient opportunity was afforded to the appellants and that the learned Magistrate has rightly passed the impugned order on the basis of the evidence available on record.
22. I have carefully considered the rival submissions and have minutely examined the original Record and Proceedings received from the learned trial Court.
23. At the outset, it deserves to be noted that every judicial proceeding is required to conform to the fundamental principles of natural justice. One of the cardinal principles is audi alteram partem, which mandates that no person should be condemned without being afforded a fair and reasonable opportunity of hearing. Before passing any order affecting the civil rights of a party under the Protection of Women from Domestic Violence Act, 2005, the Court is under a legal obligation to satisfy itself that notice of the proceedings has been duly served upon the respondents and that they have been afforded an effective opportunity to contest the proceedings.
24. The learned trial Magistrate, while passing the impugned judgment, has observed that though notices were served upon the original opponents, they failed to remain present and, therefore, their

right to file a reply was closed and the matter proceeded ex parte. However, upon careful scrutiny of the original Record and Proceedings, this Court finds that the said observation is not borne out from the record.

25. The original record does not disclose any acknowledgment, service report or other material establishing that notices issued in the proceedings were duly served upon each of the original opponents before the learned Magistrate proceeded ex parte against them. No order recording judicial satisfaction regarding valid service of notice is available on record.
26. On the contrary, the Rozkam (daily proceedings) maintained by the learned trial Court reveals that after institution of the proceedings, the original opponents had in fact appeared before the learned trial Court. The Rozkam further reveals that, with the consent of the parties, the dispute was referred to the Mediation Centre for exploring the possibility of an amicable settlement. Thus, the record itself demonstrates that the parties had appeared before the Court and had participated in the proceedings at least to the extent of mediation.
27. However, after the mediation proceedings, there is nothing on record to indicate that the appellants were duly informed about the subsequent dates of hearing or that any fresh notice was served upon

them after the matter was received back from mediation. In the absence of any material evidencing due communication of the subsequent proceedings, the learned trial Magistrate was not justified in presuming that the appellants had deliberately remained absent and in proceeding ex parte against them.

28. The impugned judgment does not disclose any discussion regarding the mode of service, the proof of service or the Court's satisfaction that the appellants had due notice of the proceedings after the mediation process. The learned Magistrate appears to have proceeded mechanically without verifying whether the mandatory procedural requirements had been complied with.
29. The right to defend a proceeding includes the right to file a written statement, to cross-examine the witnesses produced by the opposite party and to lead evidence in support of one's defence. These valuable rights cannot be taken away unless the Court is fully satisfied that the concerned party, despite due service of notice, has intentionally failed to appear. In the present case, such satisfaction is conspicuously absent from the record.
30. Since the impugned judgment has been rendered without ensuring compliance with the mandatory requirement of affording an effective opportunity

of hearing to the appellants, the proceedings stand vitiated. The violation goes to the very root of the matter and has caused serious prejudice to the appellants. Consequently, this Court is of the considered opinion that the impugned judgment and order cannot be sustained in law.

31. This Court consciously refrains from examining the merits of the allegations levelled by either party, as any observation on merits may prejudice the case of either side before the learned trial Court after remand. The interests of justice would be adequately served by setting aside the impugned judgment and remanding the matter to the learned trial Magistrate for fresh adjudication after providing both parties full and effective opportunity of hearing.
32. Since the impugned judgment suffers from procedural irregularity as well as absence of proper findings on material issues, this Court considers it inappropriate to decide the merits of the dispute for the first time in appeal. The ends of justice would be better served by remanding the matter to the learned trial Court for fresh adjudication after permitting both parties to file pleadings, lead evidence, cross-examine witnesses and address arguments.
33. In view of the forgoing discussions, accordingly, Point Nos.1, 2 and 3 are answered in the

Affirmative and for the point no.4 I may pass the following order.

:-: ORDER :-:

1. The present appeal no. 17 of 2025 is hereby allowed. The impugned judgment and order dated 01.02.2025 passed by the learned Additional Chief Judicial Magistrate, Jetpur in Criminal Miscellaneous Application No.68 of 2024 is hereby set aside.
2. The matter is remanded to the learned trial Court for fresh disposal in accordance with law after affording adequate opportunity to both parties to file their pleadings, lead evidence, cross-examine witnesses and advance their submissions.
3. It is clarified that all contentions of both parties on merits are kept expressly open and shall be decided independently by the learned trial Court without being influenced by any observation contained in the earlier judgment or in the present appellate judgment.
4. Both the parties are hereby directed to remain present before the trial court within a period of 30 days from the date of this order. If parties are not remained present before the court the learned trial court has to issue fresh notices to the parties and secure the presence of parties.

5. Record and proceedings be transmitted back to the trial Court forthwith along with the copy of this judgment.
6. Parties shall bear their own costs.

Pronounced in open Court today i.e. on 01st day of July, 2026.

Date: 01/07/2026
Place: Jetpur

[Rajesh Sureshchandra Purani]
7th Additional Sessions Judge,
Jetpur, Dist-Rajkot.
JUDGE CODE :- GJ00727

M.J.Vyas