

M.C.C.No. 269/2021
(Sneha v/s Ajay & Ors.)**--ORDER BELOW EXH-4--**(Passed On 27th March 2023)

The application is filed vide section 23 of the Protection of Women from Domestic Violence Act 2005 claiming interim monetary relief of Rs 20,000/- P.M and interim protection.

2. The facts necessary for deciding this application have been taken in succinct. It is averred that non-applicant no.1 is husband, non-applicant no.2 is father-in-law, non-applicant no.3 is mother-in-law and non-applicant no.4 is brother-in-law of the applicant. The marriage between applicant and non-applicant no.1 solemnized as per Buddhist rites on 30.06.2020 at Aurangabad. After marriage she went in shared-household where all non-applicants were residing together. The non-applicants have subjected the applicant to domestic violence on account of non-fulfilment of Dowery. It is alleged that the non-applicant no.1 was having love affair due to which he could not use to give time. The non-applicant no. 2 to 4 used to instigate the non-applicant no.1 due to which the non-applicant no.1 subjected the applicant to physical violence. It is alleged that non-applicant no. 1 to 3 used to torture the applicant on account that the only purpose of marrying the applicant with non-applicant no.1 was that they wanted to have maid for household work. Since, in marriage ceremony the parents of applicant failed to gift golden chain to the applicant the non-applicants on this count committed physical, mental, economical violence on the applicant. It is further alleged that since the applicant failed to conceive the child on this count also non-applicant no. 1 to 4 used to commit violence. On 24.07.2021 the non-applicants drove the applicant out of house and since then she has been residing with her parents. Hence, this application is filed.



3. The non-applicants have filed the reply at Exh-9 and resisted the application. It is asserted that after the marriage the applicant failed to perform her household duties. She on one or other pretext use to pick up quarrel with non-applicants. The non-applicant use to give her understanding but all went to vain. Despite the spread to Covid-19 the applicant used to pick up quarrel on the count that the non-applicant no.1 does not take her out of house. On this count also the applicant use to create scene in the home. It is asserted that the non-applicant no.1 tried to fulfil all wishes and desires of the applicant, however the applicant on one or other count tortured the non-applicants. On 21.07.2021 the husband of sister of applicant came at house of non-applicants and without giving then any intimation bought the wooden cupboard. When non-applicant no.1 expresses his inability to adjust the cupboard due to the small room on this count the applicant picked up cruel with him. Furthermore, on 23.07.2021 the applicant without any reason picked up cruel with non-applicants and went with her father. Thereafter, non-applicant no. 2 on 07.09.2021 made telephonic call to the father of applicant but he refused to send her back. Therefore, the non-applicant no.1 has filed the petition for restitution.

4. The learned counsel for both parties have argued in consonance with the application and reply respectively. Hence, I do not find it necessary to reiterate the same.

5. The following points have been taken for discussion.

Sr.No.	Points	Findings
1.	Whether the applicant prima-facie made out that she has been victimized of domestic violence at the hands of non-applicants?	-Yes-
2.	Whether the applicant is entitled for the interim monetary relief?	-Yes-



3.	Whether the applicant is entitled for interim protection order as sought ?	-No-
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---REASONS---

As to point no.1

6. What Acts are termed as violence have been defined under section 3 of the Act 2005 wherein it is specifically provided that an act of causing physical abuse, mental abuse, economical and emotional abuse and sexual abuse amounts to the domestic violence. When the application is filed and interim reliefs are claimed the only aspect that requires to be considered whether allegations supported by the affidavits are sufficient to meet the demands of definition laid down under section 3. In this case the applicant has specifically on affidavit raised all the allegations which alleged to be sustained by her. Certainly, such allegation prima-facie themselves are sufficient to term the commission of domestic violence. The applicant has specifically averred that on the count of non-fulfilment of demands by her parents the non-applicant have subjected her to the mental abuses. Furthermore, specifically sated that she was subjected by the nonapplicant no.1 to physical abuse. When such allegations are embodied in the application they are sufficient at prima-facies stage to hold that the applicant has made out her case.

7. The non-applicant no.1 specifically asserted that he took efforts to convinced the applicant to get back for cohabitation. Since there was refusal, he filed the petition to that regard. To substantiate this fact, he has filed copy of petition at List **Exh13**. Certainly it shows the intention of non-applicant to fetch her back for cohabitation but until that petition is not decided on merits it would at stage be premature to hold that the



applicant has without any reason left him. Resultantly, in view of the above discussion I answered this point in affirmative.

As to point no.2

8. Both parties have filed their respective assets and liability affidavits. The applicant asserted that the non-applicant no.1 having the business of beer shoppy. On the contrary the non-applicant no.1 furnishes the information at present he has no income. The fact which is undisputed on record is that the applicant is not getting any sort of maintenance from the non-applicant in any other proceeding. On the count of earning the non-applicant no.1 submitted that he educated upto B.Pharm and he is doing part time job as such he shows his income Rs 6750/-. Further all information discloses as nil. The non-applicant no.1 contended that the applicant earns Rs 20,000/-. She is well educated and as such capable to maintain herself. The applicant submitted that she is educated upto B.A and at present having no income. In order to establish the fact that the non-applicant is engaged in beer shop business the applicant has not filed any document on record.

9. At this juncture, the one fact which is undisputed on record is that the non-applicant did his pharmacy and is young age person. Such qualified person can easily earn monthly income of Rs 15,000/- P.M. The learned counsel for the non-applicant no.1 has placed his reliance on two authorities. The one is Chaturbhuj v/s Sita (2008) 2 SCC 316 wherein the Hon`ble Apex Court held that **the educated lady who chosese not to do job is not entitled for maintenance**. Another citation which is filed is 2004 CJ (Chh) 62 Shiv Kumar Yadav v/s Santoshi Yadav wherein the Hon1ble Chhattisgarh High Court held that the wife who is not willing to cohabit with the husband is not entitled for maintenance. I have thoroughly gone through the facts of both supra citation. Both these



authorities ruled on the point of section 125 of the Code of Criminal Procedure 1973. In this case the proceeding is filed under domestic violence act. It is pertinent to note that decisive factors of both these proceedings are independent and have separate points of consideration. Resultantly, both these authorities pressed in service are not helpful to the non-applicant no.1.

10. The parties appear to have lived together approximately for one year. The applicant has cohabited with non-applicant in city like Aurangabad. The non-applicant has shown any immovable property in his name in Affidavit. In such circumstances considering the status of the parties, reasonable needs of the applicant and the fact that she is living in Village and also considering the income of non-applicant I am of the considered opinion that monthly interim monetary reliefs of Rs 2,500/- will be sufficient to her. Certainly, for initiating this proceeding the applicant has to bear the expenses of her advocate and has to fetch the court. Resultantly I am of the opinion that the applicant is entitled for proceeding expenses of Rs 5000/-.

As to point no.3

11. The interim protection order is claimed to the effect that the non-applicant no.1 order to be restraint from committing any act of violence at the parental house of the applicant . Similarly, the prayer is also sought that the non-applicant no. 1 to 4 also ordered to be restraint from posting or making any defamatory statements on electronic media such as whats App. At this juncture, the averments of the application forms the part of consideration. The applicant in her application has noy made single assertion that any such act being continued to be committed by the non-applicants. The allegations on these points are totally silent. Resultantly,



in absence of specific allegation the prayer of the applicant cannot be considered.

12. Consequently, the following order.

---ORDER---

- i. The application is hereby partly allowed.
- ii. The non-applicant no.1 is hereby directed to pay Rs.2500/- P.M to the applicant towards interim monetary relief from the date of the application.
- iii. The non-applicant no.1 do pay proceeding charges of Rs.5000/- to the applicant.
- iv. The prayer for protection order is hereby rejected.

Telhara
Date. 27.03.2022

(Rahul A Rannaware)
Jt. Judicail Magistrate F. C., Telhara



Certificate

I affirm that the contents of this P.D.F. file are same word for word as per original .

Name of Stenographer	: V. M. Nawle
Court Name	: Jt.C.J.J.D. & J.M.F.C.,Telhara
Date	: 27.03.2023.
Signed by presiding officer on	: 27.03.2023.
Uploaded on	: 28.03.2023.