

**Order below Exh.5 in P.W.D.V.A. No. 24/2022**

Sau. Puja Santosh De & Ors.

**...Applicant.**

Vs-

Shri. Santosh Thakurlal De & Ors.

**...Non-applicants.**

.....

Learned advocate for applicants - Shri. P. M. Dhait,

Learned advocate For Non-applicants - Shri. M.D. Sahare & Shir.J.M.

Kondagorla

1] In main application u/s 12 of Domestic Violence Act 2005 applicant sought the relief of interim maintenance of Rs.20,000/- each to applicant no.1 and 2 u/s 23 of Protection of Women from Domestic Violence Act, 2005.

2] **In brief the case of the applicant is as under :**

A] It is the contention of the applicant no.1 that her marriage with the non-applicant no.1 was solemnized on 16/01/2017 at Ghot as per the Bengali rituals. At the time of marriage father of the applicant has given household article and cash amount of Rs.5,00,000/- to the non-applicant no.1. Applicant no.2 is the son of the applicant no.1 and non-applicant no.1. Other applicants are the relative of the non-applicant no.1.

B] Applicant no.1 went to the house of the non-applicant no.1 for co-habitation after the marriage. Non-applicant no.1 is working in Police department. Non-applicant no.1 behave properly with applicant no.1 for one and half years of the marriage. Thereafter, non-applicant no.1 along with other non-applicants started harassing her on various ground. Applicant no.1 describe in her application various ill-treatment meted out to her at the hand of the non-applicant no.1 and other non-applicants. Non-applicant no.1 also harassing her by taking doubt on her character.

Applicant no.2 was borne on 09/02/2019 out of the wedlock with the non-applicant no.1. All the expenses of the delivery of the applicant no.1 was borne by parents of the applicant. After the birth of applicant no.2, the conduct and behavior of the non-applicant no.1 towards the applicant have not been changed. In spite of the ill-treatment and harassment at the hands of the non-applicant no.1 applicant no.1 continue to co-habit with him and live with him with the hope that behavior of the non-applicant no.1 will be changed. But non-applicant no.1 continue to harass her mentally and physically. Fed up with the constant harassment at the hands of non-applicant no.1 applicant lodged the complaint with Bharosa Cell in office of the Superintendent of Police, Gadchiroli on 03/10/2022. No compromise took place between applicant and non-applicant during the course of counseling and non-applicant no.1 stated that he will go to the court against the applicants. Accordingly non-applicant no.1 file the divorce petition in the court.

3] Non-applicant no.1 failed to carry out his duty as husband. Applicant is facing the physical, mental and emotional trouble due to the conduct of the non-applicant no.1. Applicants have no source of income to maintain themselves. Non-applicant no.1 is working in police department and earn Rs.80,000/- per month as salary. Non-applicant no.1 is also earning Rs.200000/- per annum from the agriculture land at his native place. Therefore, non-applicant no.1 can give Rs.20,000/- each to the applicants. Hence, applicants prayed for grant of interim maintenance of Rs.20,000/-.

4] Non-applicant resisted the application by filling the reply at Exh.13. Non-applicant denied all the allegation of the applicants. However, he admitted that he has filed the divorce petition against applicant in the court at Gadchiroli. Non-applicants contended that applicant no.1 started quarreling with him and insisted him not to talk with his mother. She also

abused his mother. Applicant no.1 did not carry her duty as a wife by not cooking the food on time and not looking after the non-applicant no.1. She refused to established physical relationship with non-applicant no.1. She abused him in filthy language and also beat him. Non-applicant no.1 further contended that it is the applicant who has given the mental and physical trouble to him. Therefore he has filed the divorce petition before Civil Judge, Sr. Div. Gadchiroli. The contention of the applicant in the application is false and fabricated. Hence non-applicant prayed for rejection of the application.

5] Heard learned counsel for applicant and non-applicant. Perused the documents.

6] Following points arose for my determination and I record my findings against them for the reasons stated below.

No	Points	Findings
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1.	Whether applicants prima-facie prove that the non-applicants have subjected her to domestic violence ?	Yes
2.	Whether applicants are entitled to get interim maintains allowances and If yes at what rate ?	Yes
3.	What order ?	Application is partly allowed.

### **REASONS**

#### **As to point No.1 :-**

7] While deciding application for interim maintains prima facie it will have to be seen whether non-applicants have subjected applicant No.1 to domestic violence. The applicant has averred in her application that she was subjected to the domestic violence and narrated the various incident

constituting the domestic violence. It is admitted fact that applicant no.1 and 2 is the wife and son of the non-applicant no.1. Applicant has leveled the allegation against the non-applicant no.1 on oath which was duly supported by the Domestic Violence report at Exh.12. Prima facie it appears that non-applicant no.1 have committed the domestic violence towards the applicant no.1. The contention of the non-applicant no.1 about the mental and physical harassment at the hands of the applicant no.1 would be decided during the time of the evidence. It appears from pleadings and the Domestic Violence report that applicant no. 1 was subjected to domestic violence at the hands of the non-applicant no.1. Hence, I answer the point no.1 in affirmative.

**As to point No.2:-**

8] Non-applicant no.1 is working as Nayak Police Constable in the police department. It appears from the document on record that net pay of the non-applicant no.1 is around Rs.28,000/-. During the course of argument Ld counsel for the non-applicant no.1 contended that applicant no.1 and 2 was granted the interim maintenance of Rs. 5000/- each per month by Civil Judge, Senior Division, Gadchiroli in the application u/s 24 of the Hindu Marriage Act. In support of this he has filed order of Hon'ble Civil Judge at Exh.21/1. It is the contention of the counsel for the non-applicant that applicants are not entitled to the interim maintenance in this case since interim maintenance of Rs.5000/- each was granted to them from Civil Judge, Senior Division, Gadchiroli. In support of the contention Ld counsel for non-applicant no.1 relied on judgment in Criminal Revision No.203/2017 of Aurangabad Bench of Bombay High Court wherein it has been held that Magistrate has to take into account the maintenance already awarded while taking a decision whether in addition to the maintenance already awarded any more amount is required to be awarded and if yes what extent, and shall have to record reason therefore. The above authority

do not bar the grant of interim maintenance under Domestic Violence proceeding if wife is awarded maintenance in other proceeding. What above authority laid down is that the earlier interim maintenance granted to the party shall be taken into consideration while awarding the interim maintenance in other proceedings. In the instant case it must be mentioned that proceeding under Hindu Marriage Act is different from Domestic Violence proceeding. Therefore, grant of interim maintenance under section 24 of Hindu Marriage Act is not bar to the grant of interim maintenance under the Domestic Violence Act. However, interim maintenance granted to the applicant shall be considered and adjusted while granting maintenance to the applicant in the present proceeding. Total Rs.10,000/- was granted to the applicant as interim maintenance in proceeding before Civil Judge, Senior Division, Gadchiroli. Interim maintenance of Rs.2,000/- and 1,000/- to the applicants from the date of filling of this application will serve the purpose taking into the consideration of interim maintenance granted to applicant from Civil Judge, Senior Division, Gadchiroli under section 24 of the Hindu Marriage Act. Accordingly I answer the point no.2 in partly affirmative. In answering the point no.3 I proceed to pass following order.

**ORDER**

- 1] Application is partly allowed.
- 2] The non-applicant No.1 shall pay Rs.2,000/- and 1000/- per month to the applicant no.1 and 2 respectively as the interim maintenance from 15/11/2022 i.e. the date of filling of this application.
- 3] The copy of this order be supplied to the parties free of cost.

Date :06/11/2023

Sd/-  
(N.D.Meshram)  
Judicial Magistrate First Class,  
Chamorshi.

## CERTIFICATE

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

Name of Stenographer : Mr. S.N.Khandekar, Stenographer  
(Grade-3)

Name of Court :Civil Judge (Jr.Dn.) &  
JMFC, Chamorshi.

Date of Judgment/Order : 06/11/2023.

Judgment checked and  
signed by Presiding Officer on : 06/11/2023.

Judgment uploaded on : 06/11/2023.