



ORDER ON EXH. 37
(Passed on 06.02.2023)

Application under section 20(1)(b) of the Protection of Women from Domestic Violence Act 2005.

Material contentions in application -

2. The applicant contended that, she is sustained injury to her right side ear due to domestic violence at the hands of non-applicant no.1. She has suffered from pain of ear due to the hole to layer of ear. The Doctor has advised for operation of said ear. As per the certificate of doctor the estimated medical expenses for said operation is Rs. 45,000/-. Therefore, the applicant needs Rs. 45,000/- as medical expenses for her ear operation. Hence, she filed present application.

3. The applicant further contended that she had filed an application below Exh. 13 for medical expenses of Rs. 90,000/- for her abdominal and ear operation. The said application was partially allowed and directed to non-applicant to pay Rs. 50,000/- to the applicant. The applicant had withdrawn said Rs. 50,000/- amount. It is further contended that since the applicant incurred Rs. 50,000/- medical expenses for her abdominal operation only, the ear operation remains to be done. The applicant has filed certificate of Doctor containing estimated medical expenses of Rs. 45,000/- for ear operation.

4. It is further contended that the applicant cannot bear the said medical expenses for her ear operation due to low economic condition of her parental house. On the other hand the non-applicant no. 1 is serving as primary teacher in Shantiniketan Primary school,

Devtala. He gets monthly salary of Rs. 32,370/- from Rs. 53,900/- after deduction. The operation of right side ear of applicant needs to be done. Due to ear pain applicant could not appear before Court. Thus, she prayed to allow this application.

Material contentions in say of non-applicants -

5. The non-applicants filed their say at Exh. 40 and denied the contentions of application of applicant. It is contended that the applicant already exercised mandatory relief and has taken benefit of mandatory relief by order below Exh. 13. The applicant filed present application to mandatory relief for medical expenses which was already granted below Exh. 13. The said amount has been withdrawn by the applicant. The applicant can not seek relief by filing subsequent application. Therefore, the present application is not tenable. The main application is pending for cross-examination of applicant. However, the applicant did not appear before Court by taking adjournments. In absence of specific evidence of domestic violence, the applicant could not be entitled for mandatory relief. Hence, the application is liable to be rejected.

6. Perused the application, Say and documents filed on record. Heard Learned Advocate for both sides. Considered submissions.

7. Learned Advocate for applicant submitted that, the applicant had received Rs. 50,000/- for her abdominal and ear operation. However, the applicant incurred Rs. 50,000/- for her abdominal operation only. Therefore, the operation of right ear of applicant remains to be done. The certificate of Doctor for estimated medical expenses for operation has been filed. The applicant is subjected domestic violence at the hands of non-applicants. The non-applicant no. 1 has a duty to maintain the applicant and pay her medical expenses. Hence, he prayed to allow the application.

8. The Learned Advocate for non-applicants submitted that the application below Exh. 37 is repetition of contentions of application below Exh. 13 to claim relief under Section 20 (1) (b) of the said Act. Domestic Violence at the hands of non-applicant has to prove by the applicant. No evidence in respect of violence at the hands of non-applicants. The main application has been filed in 2019. The applicant and non-applicants have been living separately since 20.05.2019. During the period of 2021 to 2022, what circumstances came on record to show that the injury is caused to the applicant. The allegation in respect of injury to right ear of applicant did not mention in the main application as well as in her affidavit of examination-in-chief. The said application is not tenable on the same ground. The Court already granted medical expenses of Rs. 50,000/- to applicant below Exh. 13. The applicant has claimed Rs. 50,000/- as medical expenses in the main application and the non-applicant have already paid Rs. 50,000/- to applicant. No documents have been filed on record to show that due to assault by non-applicants the injury caused to ear of applicant.

9. The learned Advocate for non-applicants placed his reliance on case law of *Hon'ble Bombay High Court, Bench at Nagpur in Kaushik Anil Gharmi Vs. Sangita Kaushik Gharmi reported in 2014 ALLMR (Cri. 2398)*. I have gone through the case law cited supra. With due respect to the case law cited supra, the facts of the present application and facts of the case law cited supra are identically different. The case law cited supra is in respect of issue relating to entitlement for maintenance of minor children of the aggrieved person under Section 20 of the Protection of Women from Domestic Violence Act 2005. With due respect to the case law cited supra, it is not helpful to non-applicants.

10. Admittedly, the Court granted Rs. 50,000/- for medical expenses for abdominal and ear operation of applicant below Exh. 13.

The applicant has withdrawn the granted amount of Rs. 50,000/-. It is seen from the record that the applicant had filed certificates of Doctors at Exh. 12/2 and Exh.12/3 in respect of estimated medical expenses for operation and salary slip below Exh. 12/1 of non-applicant no.1 for the month of January 2021. It is also seen from the record that the Court had considered both certificates below Exh. 12/2 and 12/3 in respect of estimated medical expenses for abdominal and ear operation of applicant at the time of passing the order below Exh. 13. Applicant again claimed Rs. 45,000/- medical expenses for her ear operation.

11. The aggrieved person is under obligation to establish that she had to meet expenses incurred and losses suffered due to domestic violence on the part of the non-applicant. It is seen from record that applicant has filed bills for her gynecologic operation and medications for the amount of Rs. 43,499.77/- below Exh. 21. Therefore, it can be seen that applicant has incurred medical expenses of Rs. 50,000/- for her operation. The applicant stated that she had needed medical expenses for abdominal and ear operation. However, on perusal of medical documents filed below Exh. 21 shows that she had gynecologic operation. In our Indian society women never state their feminine medical problems openly. Hence, this change in description of operation can be accepted.

12. The Ld. Advocate for non-applicants submitted that, the subsequent application is not tenable and domestic violence to applicant at the hands of non-applicant has to be proved. In absence of specific evidence of domestic violence, applicant could not be entitled for mandatory relief. The Section 20 of the Protection of Women from Domestic Violence Act says that the medical expenses may be granted to applicant for her loss or injury caused by domestic violence. However, the Section 23 of said Act says that the Court may grant interim relief to

the applicant during pendency of main application. It means that for granting interim relief the specific evidence of domestic violence is not expected at this stage. Then main application prima-facie discloses that the non-applicants have committed an act of domestic violence. The affidavit in support of application has been filed. Therefore, the contention of non-applicants in respect of dis-entitlement of applicant for mandatory relief is not sustained.

13. Now the question arises that whether the applicant is entitled for interim mandatory relief again u/s. 20 (1) (b) of the Protection of Women from Domestic Violence Act ? Admittedly, the marriage of applicant and non-applicant no.1 is intact. Therefore, the non-applicant no. 1 has duty to maintain the applicant and pay her medical expenses. The applicant had claimed medical expenses of Rs. 90,000/- for her both operations, but the Court granted Rs. 50,000/-. The said amount had been spent for applicant's gynecologic operation. It is seen from record that the applicant had stated medical expenses for her both operation below Ex. 13. Hence, it cannot be said that applicant never stated her ear injury before this application. The applicant has filed certificate of doctor for estimated medical expenses for ear operation. She also filed her previous operation documents, hence no reason to disbelieve the contention of the applicant. In view of above discussion the applicant is entitled for medical expenses for her ear operation.

14. The non-applicant no. 1 not denied his income. In January 2021 he got monthly salary of Rs. 32,370/-. The earlier income in salary of non-applicant no. 1 can be considered. Therefore, it can be said that the non-applicant no. 1 has sufficient means. The non-applicant no. 1 being husband of applicant has a duty to maintain her. The doctor certified that the ear operation of applicant needs to be done. If the application is allowed no prejudice would be caused to non-applicant,

per contra if the application is rejected it would be caused loss to the health of applicant. Though the non-applicant no. 1 has sufficient means, his liabilities can not be sight of. In such circumstances the Rs. 20,000/- would be sufficient for ear operation. Hence, following order :-

ORDER

1. Application below Exh. 37 is party allowed.
2. Non-applicant no. 1 to pay Rs. 20,000/- to the applicant for medical expenses of her ear operation within month from date of this order.

AUSA
Date – 06.02.2023.

(K. K. Waghmare)
4th Judicial Magistrate F.C., AUSA