

MHNG120001082023

Misc.Criminal Application No.16/2023
Neelam and another/Pramod

Order Below Exh.5
(Passed on 28th day of June, 2023)

Applicant has filed this proceedings under sections 12, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 (in short **Act, 2005**). The applicant has also filed this application under section 23 of the Act, 2005 to restrain non-applicant from selling orange crops of the second season as applicants are legally entitled to get maintenance out of that income, to direct the non-applicant to involve applicant no.1 in all financial transactions, to direct the non-applicant to deposit 2/3rd share of his agricultural income in Court as well as for applicant no.2's school fees, education, clothing and medical emergency and to repay the loan of Rs.76,000/- of Union Bank of India.

The upshot of the case of applicants is-

2. Applicant no.1 submitted that her marriage with non-applicant was solemnized on 12.09.2009 at Warud, Tah.Warud, Dist.Amravati as per the rites and customs prevailing in their society. After their marriage, applicant no.1 came to reside with non-applicant at her matrimonial house at Badegaon (Umri), Tah.Narkhed, Dist.Nagpur. She further submitted that they both have resided together for a period of more than 12 years. Applicant further submitted that her parents have given 5.5 tola gold to her after marriage. Applicant no.1 out of said wedlock gave birth to child namely Konark (applicant no.2) on 17.01.2011. Applicant no.2 is presently studying in 7th standard. Applicant no.1 further submitted that the father of non-applicant has

given a share of agricultural land admeasuring 3 acres out of his ancestral property to non-applicant, accordingly it is registered in the name of non-applicant, he is having orange orchards and taking crops of cauliflower on that land. Apart from that agricultural land, the non-applicant is also engaged in various business and brokerage. She further submitted that non-applicant is earning income of more than Rs.10,00,000/- per annum from the said agricultural land by selling oranges and cauliflower. Additionally, the non-applicant is also earning Rupees 7 to 8 lakhs p.a. from his other businesses.

3. Applicant no.1 further submitted that the non-applicant is a habitual drunkard and remains drunk for most part of the day. Due to his addiction of drinks, applicant no.1 was looking after and supervising all the agricultural operations. Applicant no.1 used to accompany agricultural labourers on the field and also used to work with them in field, but non-applicant never paid a single penny to her. Applicant no.1 further submitted that non-applicant used to squander away the entire income from agriculture and other allied businesses on drinking and living luxurious life. She further submitted that to satisfy his drinking habits, non-applicant has compelled the applicant no.1 to sale her 5 grams gold out of her stridhan and spent the entire amount in his addiction of drinking. She further submitted that the non-applicant has forced her to mortgage her gold items in Union Bank of India, Narkhed and taken loan of Rs.76,000/-, however non-applicant has wasted all that amount in his addiction. Applicant no.1 further submitted that the non-applicant is a habitual drunkard and while drunk, he used to mercilessly beat the applicant no.1 with fisticuffs (by kicks and blows) even before the agricultural labourers in the field. Non-applicant used to abuse the applicant no.1 in very filthy language, he used to threaten her that he will kill her. Applicant no.1 further submitted that she was tolerating all the mental and physical harassment by non-applicant only

to save her married life and for the future of their minor son. Being aggrieved by the extreme physical and mental torture by the non-applicant, the applicant no.1 alongwith applicant no.2 has left her matrimonial house on 09.03.2022 as she was having apprehension about their life in their matrimonial house and started living in a rented accomodation. Applicant no.1 has started a small beauty parlour for their livelihood and education of applicant no.2. She is earning Rs.5000/- per month out of it, she has to pay Rs.4000/- towards rent. Both applicants are facing extreme financial problems, because non-applicant has not bothered to know about their welfare. On the contrary, the non-applicant is indulged in his drinking habits and living a luxurious life. Therefore, applicant no.1 has also filed police complaint against non-applicant. Applicant no.1 further submitted that non-applicant was having illicit relations with several womans. Non-applicant used to spent his entire earning on such immoral and adulterous acitivities and drinking. When applicant no.1 objected about it, non-applicant used to mercilessly beat her and subjected her to acute mental torture.

4. Applicant no.1 further submitted that non-applicant owns agricultural land of three acres given by his father as share out of his ancestral property, non-applicant is earning income of more than Rupees ten lakhs from that agricultural land by selling oranges and cauliflower as well as he is earning Rupees 7 to 8 lakhs from his other businesses. Applicant no.1 was compelled by non-applicant to leave her matrimonial house alongwith her minor son in March, 2022 and since then non-applicant has not given any monetary support to both the applicants for their livelihood. Applicant no.1 is having very meagre source of income, which is not enough for their livelihood and education of applicant no.2. She further submitted that non-applicant is going to sell the orange crop in February, 2023 and is likely to spent the entire amount on his

immoral activities. Hence, by way of this application, applicant no.1 is requested to restrain non-applicant to sale the orange crops of second season and direct the non-applicant to involve applicant in all his financial transactions. Applicant further requested to give directions to non-applicant to deposit 2/3rd share of his income in Court to meet the daily needs of both the applicants.

5. Non-applicant has filed his say at Exh.18 and denied all the adverse allegations made against him. He only admitted the marriage with applicant no.1 and birth of applicant no.2 from their marriage wedlock. He submitted that the application is not maintainable, as applicant no.1 do not want to live with non-applicant and applicant no.1 has left the company of non-applicant without any reasonable cause. She has herself left the matrimonial house and residing separately from non-applicant to live with her own wish. He submitted that the income of applicant is more then the income of non-applicant. From her beauty parlour she earns Rs.50,000/- per month. She has not produced any document showing the earnings of non-applicant from agricultural land. He has submitted that they both have resided together for more than 12 years after their marriage and during that period, applicant no.1 is not having any complaints against non-applicant, as he has maintained her properly. He further submitted that applicant no.1 has herself left her matrimonial house on 11.03.2022 alongwith cash of Rs.1,25,000/- and gold ornaments of 4 tola, when non-applicant was admitted in Chinche Hospital at Katol. Non-applicant and his parents as well as parents of applicant no.1 tried to convince her, but she straightway refused to live with non-applicant. He further stated that on 14.02.2023 applicant no.1 entered in the field of non-applicant alongwith one Sagar Mahant and they abused and threatened non-applicant. Accordingly, non-applicant has lodged report against them. He further stated that at present applicant no.1 is in the company of Sagar Mahant. Applicant is not

having any affection about her family obligations due to her involvement in extra marital relationship. Non-applicant further submitted that he is ready and willing to reside with applicants. He is unable to give separate maintenance to applicants. Applicant no.1 is running a beauty parlour namely "Beauty and Spa Saloon" at Narkhed and earning more than Rs.50,000/- per month. Therefore, applicant is not in need of any interim maintenance. He further submitted that applicant no.1 has filed this petition with malafide intention only to harass non-applicant and to gain monetary relief from non-applicant. The application is not tenable, hence he requested to reject the application.

6. Perused application and reply. Heard both the learned advocates. Perused documents filed on record.

7. Following points are formulated for my determination and I record my findings against each of them for reasons to follow:-

SN	Points	Findings
1	Whether applicant prima facie proves that non-applicant has subjected her to domestic violence ?	Yes.
2	Whether the applicant is entitled for interim maintenance ?	Yes.
3	If yes, what would be the quantum?	Applicant no.1 is entitled to get interim maintenance of Rs.5000/- pm and applicant no.2 is entitled to get interim maintenance of Rs.3000/- pm from non-applicant.
4	What order ?	Application is partly allowed as per final order.

REASONS

As to point no.1:-

8. The applicant has elaborately pleaded in her application the

ill-treatment that were committed by non-applicant to her during her cohabitation with non-applicant. Similarly, the non-applicant has also filed his say and denied all the adverse allegations made against him by applicant no.1. While deciding the interim maintenance application, it is not necessary to go into the merits of case. It is only required to see whether prima facie the applicant is subjected to physical and mental cruelty by the non-applicant. In the present proceeding the applicant has categorically narrated all the incidents of harassment on her by the non-applicant. As discussed above, there is no need to go to merits of the case while deciding interim maintenance application. Applicant has filed this application alongwith her affidavit. Hon'ble High Courts also in number of cases mentioned that there is no reason to disbelieve applicant's version supported with her affidavit. Though non-applicant has denied all the adverse allegations made against him in application, yet that fact will be determined at the final hearing of case. At the time of deciding interim maintenance application, the Magistrate has to consider purpose and object of the enactment. Protection of Women from Domestic Violence Act, 2005 is a social enactment enacted with purpose to give urgent reliefs to deserted woman. It is settled principle of law that there is no need to go into the merits of case while deciding interim maintenance application. Hence in my opinion, prima facie applicant no.1 has by her contentions in application supported with affidavit has shown that during her stay with the non-applicant she was subjected to physical and mental cruelty by the non-applicant. Though the non-applicant has denied it in toto, yet it will be decided at the final hearing of case after giving opportunity to both the parties to lead their evidence.

9. Considering the object behind enacting the Protection of Women from Domestic Violence Act, 2005 as well as prima facie allegations made by the applicant no.1 against the non-applicant, in my

opinion, applicant has prima facie proved that after her marriage the non-applicant has subjected applicant no.1 to physical and mental cruelty. Applicant no.1 in her application contended that the non-applicant is a habitual drunkard and remains drunk whole day. Applicant no.1 further contended that non-applicant no.1 is always used to abuse applicant no.1 in filthy language and always used to assault her mercilessly with fisticuffs (by hands, legs and blows). As per contentions of applicant no.1, non-applicant is taking huge income from his field and other businesses, but he has not given any amount to applicant no.1 for her daily needs during her cohabitation with him. She further submitted that non-applicant always spent all his income on his drinking habits and towards his luxurious life. Applicant no.1 further alleged that non-applicant is having illicit relations with several woman, non-applicant used to spent his entire earnings on such immoral and adulterous activities and drinking. Applicant further contended that she has tolerated all those things only to save her married life and for future of her minor son. She further contended that however due to immense threat of life from non-applicants, she has left her matrimonial house alongwith son and started to reside separately. She further stated that to meet their daily needs, she has started a small business of beauty parlour from which she can earn Rs.5000/- per month.

10. In my opinion, no married Indian women will go to file application with allegations of domestic violence against her husband when everything in her married life is sound. In my opinion, as the applicant has approached to this Court for justice against mental and physical harassment by the non-applicant, then there is no reason to prima facie disbelieve the versions of applicant. As discussed earlier, no women from Indian society will go to approach Court against her husband without any reason. Therefore, in my opinion prima facie applicant has shown that during her cohabitation with the non-

applicants, she was subjected to mental and physical harassment by the non-applicant. Hence, I answered point no.1 in affirmative.

As to point nos.2 & 3:-

11. Both these points are interlinked with each other, hence I am discussing them together.

As per contentions of applicant no.1, due to physical and mental harassment by the non-applicant she has left her matrimonial house from 09.03.2022 alongwith her minor son and now residing separately. Applicant no.1 has pleaded that to meet their daily needs, she has started a small beauty parlour. She further submitted that she could earn Rs.5000/- per month from that beauty parlour and out of it she has to pay rent of Rs.4000/- per month. She further stated that they are facing immense financial problems. Non-applicant has not bothered to know about the welfare of applicant no.1 and 2 till the date.

12. On the contrary, non-applicant has denied all the adverse allegations made against him. He came with specific pleading that applicant no.1 is having beauty parlour named and styled as "Beauty and Spa Saloon" at Narkhed and she is earning Rs.50,000/- per month from that beauty parlour. He further contended that without any reason the applicant no.1 has left the company of non-applicant and started to reside separately. Applicant no.1 cohabited with non-applicant no.1 for more than 12 years after their marriage, but she is not having any complaint against him as he has maintained her properly. He further contended that applicant no.1 has left the matrimonial house without any reason alongwith cash of Rs.1,25,000/- and gold ornaments of 4 tolas. He further contended that he tried on several times to applicant no.1 to come back for cohabitation, however she has straightly denied it. He further contended that applicant no.1 is in extra marital relationship. Though non-applicant has pleaded that applicant no.1 is having monthly

income of Rs.50,000/- from her beauty parlour, however he has not produced any document to show the income of applicant no.1. The non-applicant has admitted his marriage with the applicant no.1 and birth of applicant no.2 from that marriage wedlock. From perusal of record, it is seen that the marital status between both the parties is still in existence. Though non-applicant pleaded that applicant no.1 has herself left his company, however in my opinion no Indian married woman will left her matrimonial house without any reason and approached to court against her husband, when everything in her married life is going smoothly. Logically, no married woman will take such harsh step to left the company of her husband and to left the matrimonial house without any reason, when she is having responsibility of a minor son. In the case in hand, both the parties have made allegations about extra marital relations of both the parties, but that cannot be decided under the provisions of this Act and similarly not at the time of deciding interim maintenance application. As discussed earlier, it is settled principle of law that while deciding interim maintenance application, it is not expected to go to the root of case. Applicant no.1 in her application contended that from the date when she started to reside separately from non-applicant, since then non-applicant has not made any arrangement for the livelihood of both applicants. Non-applicant has also not come with the case that from the date of separation he has made any monetary assistance for the livelihood of both the applicants. Admittedly, applicant no.2 is minor son and is living with applicant no.1. As per record, since 11.03.2022 applicant no.1 is residing separately from non-applicant alongwith her minor son. Applicant no.1 is his legally wedded wife and applicant no.2 is the son begotton from their marriage wedlock, therefore it is his legal and moral duty to maintain applicants. He cannot avoid his duties towards the applicants. Though non-applicant contended that applicant no.1 is earning Rs.50,000/- from beauty parlour, however he has not produced any document in support

of it. Non-applicant has admitted that his father has given three acres of land out of his ancestral property to him, but he denied that he is taking oranges and cauliflower from that field and earning Rupees 7 to 8 lakhs per annum from his agricultural land and Rupees 10 lakhs per annum from his other businesses. Applicant no.1 in her application requested to restrain the non-applicant from selling orange crop of second season and requested to direct the non-applicant to deposit 2/3rd share pertaining to applicant in Court to facilitate both applicants to meet their daily needs and to repay the loan of Rs.76,000/- to Union Bank of India.

13. Ld. advocate for non-applicant during his arguments submitted that non-applicant has sold the orange crops as it is perishable in nature. He cannot keep them for many days, otherwise it will be damaged and he may sustain huge financial loss. As per contentions of non-applicant, he has sold the orange crop. Then what amount non-applicant has earned from that selling is fact within his knowledge. How much amount non-applicant has earned from the sale of orange crop is his personal information, hence it is expected that he has to file on record how much income he has earned from sale of orange crop. However, he has not produced any document on record to that effect. Applicant no.1 in her application has not specifically mentioned any amount which she ought to have claimed as interim maintenance from the non-applicant. However, she prayed to direct the non-applicant to deposit 2/3rd share of his agricultural income in Court. As discussed above, both parties have not produced any document about the sale and income of non-applicant from crop of oranges. However, applicant alongwith her application has filed 7/12 extract of Gat No.413/1/B. She has also filed 8A extract of that agricultural field, from its perusal it is seen that 1H 20R land is mutated in the name of non-applicant. It is also seen from 7/12 extract that he is taking orange crops from that field and is having well in that field. Hence, it can be inferred that non-applicant

might have taking good income from that agricultural field. Except it, applicant no.1 has not produced any document to show the income of non-applicant from his other businesses. As per directions of Hon'ble Supreme Court in **Rajnish .vs.. Neha**, both parties are directed to file their affidavit of Assets and Liabilities. Applicant no.1 has filed the copy of rent of her house, from which it is seen that she has to pay rent of Rs.4000/- per month. She has also filed photograph of her beauty parlour. She has also filed on record the copies of online rent payment by her. Non-applicant has not mentioned his income even in his asset and liabilities affidavit also. However in his assets and liabilities affidavit he has mentioned the address of applicant no.1 as "C/o.Prakash Kurve, Near Santaji Co-operative Bank, Narkhed". Hence, it can be inferred that the non-applicant has admitted that applicant no.1 is residing in rented house. Non-applicant has not disclosed his income. Non-applicant in his reply has himself admitted that his father has given him 3 acres land out of ancestral property bearing Gat No.413/1/B. From perusal of that 7/12 extract, it is clearly seen that non-applicant is taking orange crops from it. Admittedly, applicant no.2, aged 13 years, is son of applicant no.1 and non-applicant and is taking education. Admittedly, applicant no.2 is residing with applicant no.1 from the date of separation, non-applicant has not paid any amount to both the applicants for their livelihood. Non-applicant has also not pleaded that he has made any monetary help to both applicants for their livelihood since applicant no.1 is residing separate from him. As per record, non-applicant is young person of 43 years age, he is not having any physical and mental disease, so that he cannot work and earn. Non-applicant has also not come with case that due to any disease he is unable to work and earn. He is young person, can earn good income. From perusal of 7/12 extract of Gat No.413/1/B of Wadegaon Umri, Tah.Narkhed, prima facie it is seen that non-applicant is having 1H 20R agricultural land. Non-applicant in his say has admitted the same, but denied that he is taking

orange crops from it. However, from perusal of 7/12 extract, it is clearly seen that he is taking orange crop from that agricultural field. Except it, applicant no.1 has not produced any document to show the exact income of non-applicant.

14. Applicant no.1 by way of this application requested to restrain the non-applicant from selling orange crops of second season. However, admittedly oranges are perishable in nature, they have to be plucked within time and have to be sold out within short period, otherwise it will get damaged. Hence, the prayer of applicant to restrain non-applicant from selling his orange crops of second season is not maintainable in the eyes of law. Practically it is not possible. Hence that request of applicant to restrain non-applicant from selling orange crops is hereby rejected. Applicant further requested to direct the non-applicant to deposit 2/3rd amount of his agricultural income in court. But neither applicant no.1 nor non-applicant has filed on record any document to show the exact income of non-applicant from his agricultural field. Applicant has not specifically mentioned the amount which she ought to have claimed as interim maintenance. When nothing is produced on record by both parties to show exact income of non-applicant from his agricultural field, then no such order to direct the non-applicant to deposit 2/3rd of his agricultural income can be made. However, in today's situation, to meet the daily needs of both applicants as well as for education of applicant no.2, in my opinion the interim maintenance of Rs.5000/- p.m. to applicant no.1 and Rs.3000/- p.m. to applicant no.2 will be sufficient to meet her daily needs. Accordingly, I record my findings as against point no.2 in the affirmative and point no.3 accordingly and pass the following order for point no.4:-

ORDER

1. The application for grant of interim maintenance filed by the applicants vide Exh.5 is partly allowed.

2. The non-applicant is hereby directed to pay Rs.5000/- (Rupees Five Thousand Only) per month to applicant no.1 and Rs.3000/- (Rupees Three Thousand Only) per month to the applicant no.2 as interim maintenance, from the date of this application till the disposal of main application.
3. Copy of this order shall be given free of costs to both the parties.

Narkhed.
Date-28.07.2022.

(Smt.Vrushali D.Sungare)
Judicial Magistrate First Class, Narkhed,
Tahsil-Narkhed, District-Nagpur.

Argument heard on	28.06.2023
Order passed on	28.06.2023
Transcription ready on	28.06.2023
Order checked and signed on	28.06.2023

CERTIFICATE

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

Name of Stenographer-A.Y.Kulkarni (Gr.-III)