

MHNG120002282022

Misc.Criminal Application No.41/2022
Shilpa/Pravin**Order Below Exh.4**

Applicant has filed this proceedings under sections 12, 18, 19, 20, 21 and 22 of the Protection of Women from Domestic Violence Act, 2005 (in short **Act, 2005**). The applicant has also filed this application for interim maintenance of Rs.8000/- per month under section 23(2) of the Act, 2005.

The upshot of the case of applicants is-

02. The marriage of applicant was solemnized with the non-applicant no.1 on 21.02.2011 at Jalalkheda, Tah.Narked, Dist.Nagpur as per the rites and customs prevailing in their society. Applicant is legally wedded wife of non-applicant no.1. After marriage, the applicant went for cohabitation at the parental house of non-applicant no.1 at Mowad, Tah.Narkhed, Dist.Nagpur alongwith all presented articles and gold ornaments of 70 grams given by her parents in marriage. Applicant lived in joint family of non-applicant no.1 for one month and thereafter they both went to Pune to reside, due to employment of non-applicant no.1. Non-applicant no.1 was doing private job at Nobel Hospital, Pune. Non-applicant was having habit of daily consumption of alcoholic drink. At Pune, applicant and non-applicant no.1 were residing in a rented room. Applicant has given birth to their son on 12.02.2014 out of

said wedlock. During stay of applicant with the non-applicant no.1 at Pune, he insisted and forced applicant to bring Rs.50,000/- from her parents. However, due to poor financial condition of parents of applicant, they could not meet the demands of non-applicant no.1. Due to non-fulfilment of monetary demands of non-applicant no.1 by the applicant's parents, he tortured the applicant physically and mentally as well as non-applicant no.1 has also beaten applicant mercilessly and also many times given threats of life to the applicant. However, due to love and affection towards the non-applicant no.1 and his family, the applicant has not filed any complaint against the non-applicant no.1.

03. In February, 2018, the non-applicant no.1 has left his job at Pune and came to reside at his parental house alongwith applicant and their minor son Ansh. During the stay of applicant with the non-applicant no.1 and his family, they have tortured applicant and also have regularly beaten applicant mercilessly on some or other grounds. The parents of non-applicant no.1 i.e. non-applicant nos. 2 and 3 were continuously instigating the applicant to bring Rs.50,000/- from parents of applicant, on failure to fulfill their demand non-applicant nos.2 and 3 always provokes non-applicant no.1 to torture applicant physically as well as mentally. Non-applicant nos.2 and 3 were picking up quarrels on some or other reasons and were harassing the applicant mentally. Applicant was continuously kept under physical and mental torture by all the non-applicants. They forced applicant to leave their house and go to her parental house at Jalalkheda. All the non-applicants always used to insult, abuse the applicant in very indecent manner.

04. On 16.11.2021 the non-applicant no.1 has forcibly asked the applicant to go to her parents house. On her denial, the non-applicant no.1 has mercilessly beaten applicant and non-applicant nos.2 and 3 have roughly abused the applicant and they all have forcibly drive away applicant and her minor son Ansh from their house, because of which the applicant was not having any option to take shelter at her parents house alongwith her minor son and since then applicant is living at the mercy of her parents.

05. On 12.02.2022 the non-applicant no.1 came to the parental house of applicant and under the strong influence of alcohol picked up quarrel with the applicant and her parents and snatched and taken away her minor son forcibly in the night time to his house and since then her minor son Ansh is kept in very unsafe custody of non-applicant nos.1 to 3.

06. As per applicant, the non-applicant no.1 is engaged in a private business of running hotel. He is having income of Rs.50,000/- per month and also having two acres of irrigated agricultural land at Narkhed and is earning Rs.30,000/- per month from that agricultural field. The non-applicant no.1 is having very sound financial condition. Applicant is not having any independent source of income, shelter to maintain herself. She is living on the mercy of her old parents, whose financial condition is very weak. Hence, by way of this application she is claiming Rs.8000/- per month as interim maintenance from the non-applicant no.1.

07. Non-applicant nos. 1 to 3 have filed their reply at

Exh.11 and denied all the contentions in the application. The non-applicant no.1 has admitted his marriage with the applicant no.1 and also birth of son Ansh from that marriage wedlock. However, he has flatly denied that he was having habit of consumption of alcohol and he mentally and physically harassed the applicant to bring Rs.50,000/- from parents.

08. According to non-applicants, the applicant was having wish to live in city away from his parents. Therefore, as per her wish, the non-applicant no.1 started to doing a private job in Nobel Hospital, Pune. He complied all the requirements of applicant. However, due to less salary of non-applicant no.1, it was difficult for him to maintain applicant and their minor son at big metropolitan cities like Pune. Therefore, he has left his job and came to his parental house. His parents well treated the applicant but after some days, the applicant picked up quarrel with the non-applicants on very petty issues and forced the non-applicant no.1 to reside away from his parents.

09. On 16.11.2021 applicant at her own wish went to her parental house for Bhaubeej, after 8 to 10 days when the non-applicant no.1 approach applicant to bring her to her matrimonial house at Mowad, at that time applicant and her parents insisted the non-applicant no.1 to take a rented room or house at Nagpur, then she will come for cohabitation. Non-applicant no.1 tried on several times to convince the applicant and her parents, but all was in vain.

10. He further contended that on 12.02.2022 the applicant

called the non-applicant no.1 on birthday of their son Ansh, however after birthday programme applicant's parents picked up quarrel with the non-applicant no.1 to reside away from his parents and also insulted him. They put a condition to the non-applicant no.1 to reside separately alongwith applicant, otherwise applicant will dissolve the marriage. Non-applicant no.1 has also issued RPAD notice to applicant through his advocate to lead matrimonial life with him. Applicant gave reply notice. The non-applicant no.1 is ready to lead matrimonial life with the applicant. He further contended that the non-applicant no.1 and his family have never harassed the applicant physically and mentally. She has made all allegations only to support her claim. Non-applicant no.1 has not deserted the applicant, on the contrary she herself at her own will has left his company. Hence, applicant is not entitled to claim any maintenance from the non-applicant no.1. He further contended that he is not having any independent source. His old aged parents are also dependent on him. It is not possible for him to give separate maintenance amount to applicant. He is ready to cohabit with the applicant. Hence, he requested to reject the interim maintenance application filed by the applicant.

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

12. 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 the applicant proves that she is physically and mentally harassed by the non-applicant no.1 ?	Yes.
2	Whether the applicant is entitled for interim maintenance ?	Yes.
3	If yes, what would be the quantum?	Applicant is entitled to receive interim maintenance from non-applicant to the tune of Rs.3000/- pm.
4	What order ?	Application is partly allowed as per final order.

REASONS

As to point no.1:-

13. The applicant has elaborately pleaded in her application the ill-treatment that were committed by non-applicant no.1 and his family members to her during her cohabitation with non-applicant no.1. Similarly, the non-applicant has also filed his say and denied all the allegations made against him by the applicant. 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 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 womens. 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 she 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.

14. Considering the object behind enacting the Protection of Women from Domestic Violence Act, 2005 as well as prima facie allegations made by the applicant against the non-applicants, in my opinion, applicant has prima facie proved that after her marriage the non-applicant nos.1 to 3 have subjected applicant to physical and mental cruelty. Applicant in her application contended that the non-applicant no.1 on instigation by the non-applicant nos.2 and 3 always used to demand Rs.50,000/- from the parents of applicant and on their failure to comply their demand, the non-applicant nos.1 to 3 physically and mentally abused the applicant. As per contentions of applicant, the non-applicant no.1 has also beated applicant mercilessly on several times. Applicant has mentioned all those facts in her application which is also supported by her affidavit. In my opinion, no Indian women will opt to file complaints against her husband when everything in them is sound. In my opinion, as the applicant has approached to this Court for justice against harassment by the non-applicant nos.1 to 3, 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

and family without any reason. Therefore, in my opinion prima facie applicant has shown that during her cohabitation with the non-applicant no.1, she was subjected to mental and physical harassment by the non-applicant no.1 and his family. Hence, I answer point no.1 in affirmative.

As to point nos.2 & 3:-

15. As per contentions of applicant, due to physical and mental harassment by the non-applicant she has left his company and now residing with her parents. Applicant has pleaded that she is not having any independent source of income. She is living on the mercy of her parents. Though the non-applicant has denied all the allegations made against him, yet he has also not pleaded that the applicant is having any income of source. The non-applicant no.1 has admitted his marriage with the applicant and birth of son Ansh from that marriage wedlock. From perusal of record, it is seen that the marital status between both the parties is still in existence. Therefore, in my opinion when the applicant is not having any independent income source, naturally she requires monetary relief from the non-applicant. Applicant is his legally wedded wife, therefore it is his legal and moral duty to maintain applicant. He cannot avoid his duties towards the applicants. As per record and even say of non-applicant, he is young person aged 37 years. He has even not pleaded that he is suffering from any mental and physical diseases due to which he is unable to do any work.

16. According to applicant, the non-applicant no.1 is engaged in a private business and having income of Rs.50,000/- per month. However, the applicant has not produced any document to prima facie show the income of non-applicant no.1. Applicant has further

also contended that non-applicant no.1 is having agricultural property at Narkhed, however she has not produced any document to that effect. Non-applicant no.1 has not made any contentions regarding his source of income. Though the applicant has not produced any document or 7/12 extract of non-applicant no.1 to show his source of income, yet non-applicant no.1 has not specifically denied the income in his reply. As discussed earlier, the non-applicant no.1 is young person without any physical and mental disease. As applicant is his legally wedded wife, it is his moral and legal duty to maintain her. Even as per record, it is nowhere mentioned that from the date of separation non-applicant no.1 has made any monetary help to applicant for her livelihood. Moreover, non-applicant no.1 has not pleaded so in his reply. Considering the age of non-applicant no.1, day to day needs of applicant, in my opinion interim maintenance of Rs.3000/- per month 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.4 is partly allowed.
2. The non-applicant no.1 is hereby directed to pay Rs.3000/- (Rupees Three Thousand Only) per month to the applicant for her interim maintenance from the date of this application, till the disposal of main application.
3. Both the parties are directed to cooperate for expeditious disposal of this matter.

Narkhed.
Date-28.07.2022.

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

Argument heard on	28.07.2022
Order passed on	28.07.2022
Transcription ready on	28.07.2022
Order checked and singed on	28.07.2022

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)