

Criminal Misc. Appl. No.88/2020
Shital Vs. Avinash

ORDER BELOW EXHIBIT - 5

(Passed on this 13th day of June,2022)

1. Present application is filed by the applicant for the interim maintenance under Section 23 of Domestic Violence Act 2005. The applicant has filed this application for grant of interim maintenance from the non-applicant to the tune of Rs.20,000/- per month.

2. In the present case the non applicants have not filed their say. Therefore, this application is proceeded ex-pate against them.

3. Ample opportunities was given to the non applicants for argument on the application. In spite that the non applicants are failed to argue on this application. Therefore, no argument order is passed against them.

4. It is averments of the applicant that the applicant and non applicant no.1 are spouse and their marriage was took place on 12/05/2019 at Kandhari Kanhan Parseoni, District-Nagpur Nagpur. Applicant's parent has incurred all the marriage expenditures and gifted gold ornaments to the applicant as Stridhan and also to non applicant no.1. Non applicant no.2 and 3 are the mother in law and father in law of the applicant. The applicant started cohabiting with the non applicants since marriage. Applicants was treated well after two months of the marriage. Then non applicants mentally and physically harassed to the applicant. One

day Non applicant no.1 came under influence of the alcohol and started beating to the applicant. The bleeding injury was sustained to the applicant. The applicant no.1 used to beat by means of leather belt and also used filthy language. However, non applicant no.6 use to make rumors in between applicant and non applicant no.1. Non applicant no.1 to 6 have taken away all the gold ornaments of the applicant. Non applicant no.2 has demanded Rs.2,00,000/- bring from her parents. However, in the month of December 2019 Rs.50,000/- , on 29/01/2021 Rs.50,000/- and April 2020 Rs.50,000/- had given by the parents of applicant on demand of non applicants. Non applicant no.1 is the transport businessmen. The non applicant no.1 owned 5 motor vehicles. Non applicant no.1 earns R.10,00,000/- p.a. from said transport business. The non applicant no.1 is capable to give maintenance of Rs.20,000/- per month. On the other hand, the applicant has no source of livelihood. She is totally depending upon her parents. Non applicants harassed for demands of Rs.2,00,000/-.

5. Heard learned advocates for both the sides. Perused record.

6. Following points arose for my determination and I record my findings against each of them for reasons to follow:

S.N.	Points	Findings
1	Whether the applicant is entitled for interim maintenance ?	...Yes.
2	If yes, what would be the quantum?	Applicant is entitled to receive interim maintenance from non-applicant to the tune of Rs.3500/- per month.
3	What order ?	Application is partly allowed as per final order.

REASONS

As to point no.1 and 2:

7. In the present case applicant has filed affidavit of assets and liability at Exh.26. In her affidavit she stated that the applicant has monthly expenditure of Rs.20,000/-. The non applicant no.1 has not filed such affidavit cum declaration of assets and liability as per direction of Hon'ble Supreme Court. Considering the allegations made in the application it would show that the applicant was harassed by the non applicants for many reasons including demand of Rs.2,00,000/-. The non applicant no.1 harassed by beating her by means of leather belt or gave fist and blow also. All these allegations it would show that the applicant was subjected to the mental and physical cruelty and harassment. Therefore, she was constrained attempt to commit suicide. In my view woman will not take take such aggressive steps unless and until she is suffered from mental and physical harassment in her matrimonial house.

8. Now I perused the NC Report No.593/2020 of Kanhan Police Station, dated 03/1/2020. On perusal of said report it would be show that, the applicant was beat up by non applicant no.1 and she was subjected to the harassment. Further FIR No. 415/2020 of Kanhan Police Station dated 07/11/2020 shows that, the non applicant no.1 has abused with filthy language and also beat up to the father of applicant. On perusal of all these documents and conduct of the non applicant no.1 shows that the applicant no.1 beat up to the parents of applicant which is also fall in category mental harassment. Even the conduct of non applicant no.1 is also show that he is very aggressive and rude. Therefore, applicant has constrained attempt to

commit suicide.

9. It is also appeared that, the applicant is living with her parents. She is totally depending upon her parents. She has not other independent source of income. On the other hand there is nothing to show that, non applicant no.1 has taken efforts to maintain her wife. In such circumstances prima facie I hold that, applicant is neglected to maintain by non applicant no.1. It is moral as well as statutory duty of husband to maintain his wife. It is also duty of the husband not to harass his wife. Prima facie, I am satisfied that, applicant has made out the case to grant this application and she is entitled for maintenance from the non applicant no.1.

10. Applicant has filed RTO information of vehicle no. MH-40-AK-4408 and MH-40-Y-3220 which are standing in the name of non applicant no.1. These two vehicles are standing in the name of non applicant no.1. Therefore, prima facie it can be inferred that non applicant no.1 is doing transport business and he earns his livelihood from that business. The applicant has not filed any independent proof of income of non applicant no.1. Therefore, income of the non applicant no.1 is require to be consider wide tune sum of Rs.15,000/- per month. Considering today's inflation and daily needs and it is apt to grant maintenance of Rs.3,500/- (Rupees three thousand five hundred only) from the date of filing of application. Hence, I given answer of point no.1 and 2 in affirmative.

As to Point No.3:-

11. In view of finding of Point No.1 and 2, I proceed to pass following order as under:-

ORDER

1. The application for grant of interim maintenance filed by the applicant vide Exh.5 is hereby partly allowed.
2. The non-applicant no.1 is hereby directed to pay Rs.3500/- (Rupees Three thousand Five Hundred 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.

Parseoni.
Date-13/06/2022

(O.J. Kulkarni)
J.M.F.C.Parseoni

Argument heard on	09/06/2022
Order passed on	13/06/2022
Transcription ready on	13/06/2022
Order checked and singed on	14/06/2022

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- M.Y. Mushtaque.