

ORDER BELOW EXH. 13 IN CRIMINAL M.A. NO. 94/2021
(Jivbai Basgonda Kakhandki Vs Ashwini Sadashiv Kakhandki)
(CNR NO. MHSN08000584-2021)

This application is under sections 18 and 23 of The Protection of Women From Domestic Violence Act **(here-in-after referred as “D.V. Act”).**

2. The Ld. Advocate for the applicant submitted that the applicant is the mother-in-law of non-applicant no.1. The non-applicant no.2 is the Son, non-applicant no.3 is son-in-law, non-applicant no.4 is daughter, non-applicant nos. 5 and 6 are grand-sons, non-applicant no.7 is grand-daughter and non-applicant no.8 is another daughter-in-law of the applicant. It is the contention of the applicant that non-applicant nos. 1 to 8 have detained the applicants husband in their house. Non-applicant nos. 1 to 8 are responsible for the death of applicants husband. Non-applicant nos. 1 to 8 had assaulted to the applicant and her younger son and driven them out of the house. Therefore, applicant on 01.04.2021, approached to The Protection Officer and filed main application. It is mere expectation of the applicant that non-applicant nos. 1 to 8 would take her to reside with them and look after her. However, despite filing this application, it did not happen. Therefore, the applicant filed this application only for protection relief under sections 18 and 23 of D.V. Act. Therefore, Ld. Advocate for the applicant submitted to allow his application.

3. On the contrary, Ld. Advocate Shri. R.K.Mundecha had filed pursis at Exh 15 and submitted that say filed to original application at Exh 20 is to be considered as say to this present application. He submitted that false application is filed. Non-applicant nos. 1 to 8 have looked after to the applicant's husband and

medical treatment provided to him. According to him, the applicant and applicants daughter are harassing to the Sadashiv's wife i.e. non-applicant no.1. According to him, the younger son of the applicant namely Sadashiv married with non-applicant no.1 on 20.02.2011. After the marriage, Sadashiv used to harass the non-applicant no.1 on the say of the applicant and his sister namely Laxmibai. The dispute between their family is also amicably settled between them by the respected persons and as per said settlement, the Sadashiv and non-applicant no.2 were given some landed property for cultivation and they have to pay Rs. 15,000/- each to the applicant and her husband. The non-applicant used to pay Rs. 15,000/- to the applicant but Sadashiv did not pay the same. Sadashiv wants divorce from non-applicant no.2 and therefore, he used to harass non-applicant no.2. Applicant is residing with Sadashiv. According to him, other brother namely Ramgonda along with non-applicant nos. 1 to 8 had looked after to the applicants husband and incurred huge medical expenses. Despite that the applicant and her younger son namely Sadashiv are harassing the non-applicant no.1. Therefore, submitted to reject the application.

4. Following points arise for my determination and I have recorded my findings thereupon for the reasons stated below :-

Sr. No.	Points	Findings
1.	Whether applicant prima-facie proves that non-applicant nos. 1 to 8 have caused domestic violence to the applicant ?	Yes.

REASONS

AS TO POINT NO. 1:-

5. Heard both sides. Perused documents on record. Relation between parties is admitted. On perusal of record, it appears that the applicant and her younger son namely Sadashiv are residing separately. Non-applicant No.2 is residing separately. On perusal of application dated 01.04.2021 filed by the applicant to The Protection Officer, Jath, it appears that the applicants younger daughter Sunita is residing at Solapur. Her daughter married with applicants younger son Sadashiv, who become son-in-law of the applicant and in the present proceeding, she is non-applicant no.1. Applicant contended that the non-applicant no.1 is demanding Rs. 5,000/-per month for her expenses and other amount for her mother and father. Non-applicant no.1 after quarrel went to her matrimonial house and after one year, she came along with her mother and father. Non-applicant nos. 1, 3 and 4 have assaulted to the applicant.

6. Further, on perusal of last para of the complaint, the applicant alleged that, she has apprehension that non-applicant nos. 1 to 8 would assault her husband by harassing him and therefore, he filed the application for custody of her husband. Further, it appears that she also apprehension that non-applicant nos. 1 to 8 would commit domestic violence against her. Applicant have danger to life of her son, daughter and herself from no-applicant nos. 1 to 8.

7. On perusal of documents filed by the Ld. Advocate for non-applicant nos. 1 to 8, all the documents filed at List Exh 19/1 to 19/5 are in respect of treatment given to the Basgonda i.e. applicants husband. Those documents only shows that the medical treatment was given to the applicant's husband. Those documents did not disclose that who has paid expenses of medical treatment. Therefore, those are in respect of applicants husband. Now admittedly, applicants husband is no more. Therefore, those documents cannot be

considered to decide question in the application.

8. Ld. Advocate for non-applicant nos. 1 to 8 had filed affidavits of witnesses at Exh 21 and 22. On the contrary, Ld. Advocate for the applicant filed affidavit at Exh 24 of their witness. Those affidavits are mere counter affidavits of the witnesses and those cannot be considered at this stage without cross-examine the witnesses. Therefore, from those affidavits prima-facie opinion cannot be decided firmly.

9. On perusal of documents, it appears that main dispute is between applicants younger son namely Sadashiv and non-applicant no.1 Ashwini. However, the applicant being the mother-in-law of non-applicant nos. 1, 8 and mother of non-applicant nos. 2 and 4 had resided in their shared household. Circumstances mentioned by the applicant are prima facie shows that, there is domestic violence committed by the non-applicant nos. 1 to 8. As per the contention of the applicant, her husband is died due to harassment of non-applicant nos. 1 to 8.

10. Considering pleadings and documents filed by both the parties, prima facie it appears that, there is dispute between the parties on the ground of ancestral property as well as harassment of non-applicant by the hands of Sadashiv. The document produced by the non-applicants at Exh 17/4, which is certified copy of application under section 13 of Hindu Marriage Act filed by the Sadashiv against the non-applicant no.1. The non-applicants admitted that their dispute is attempted to be amicably resolved by the respected persons of their village. Therefore, prima facie it appears that there exists some kind of dispute between the applicant, her son Sadashiv and the non-applicant nos. 1 to 8.

11. As per section 18 of D.V act, the magistrate after giving an opportunity to be heard on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the non-applicants from instances mentioned in clause (a) to (g) of section 18 of D.V. Act. As per clause a the magistrate may prohibit committing any act of domestic violence.

12. Considering that the applicant is only residing with her younger son, who is also driven out of the ancestral house by non-applicant no.1 especially, the applicant is entitled for protection order under section 18 of D.V. Act. Further the orders under section 18 of D.V. Act can be passed as interim relief under section 23 of D.V. Act. Therefore, considering above discussion, I answer point no.1 in the affirmative.

AS TO POINT NO.2 :-

13. In view of my findings to point no.1 in the affirmative, in answer to point no.2, I pass the following order.

ORDER

1. Application is allowed.
2. The Protection Officer, Jath is directed to give protection to the applicant from the non-applicant nos. 1 to 8.
3. The copy of this order be forwarded to the Protection Officer, Jath.

4. Copy of this order be given to both parties free of costs.

Sd/-

Jath.

(A.B. Jadhav)

Date :-05/03/2022

Judicial Magistrate First Class,
Jath.

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

Name of steno : I.G. Ainapure,

Name of court : Shri. A.B. Jadhav,
Jt. CJJD & JMFC, Jath

Date of Order : 05.03.2022

order signed by Presiding Officer on : 08.03.2022

order uploaded on : 19.03.2022