

ORDER BELOW EXH. 31 IN CRIMINAL M.A. NO. 141/2019

This application is u/s. 23 of the Protection of Women From Domestic Violence Act, (hereinafter in short 'the said Act') for interim maintenance of Rs. 10,000/- per month.

2. It is case of the applicant that, respondent No. 1 is her husband. She was residing at Baleshwarnaka and respondent No. 1 was studying at Shivaji Mahavidyalay. They became acquainted with each other while regular passing from same road and lateron they were in love with each other. On 15/04/2012 they solemnized marriage at Tuljapur temple as per Hindu rites. As the marriage was inter-caste marriage, their relatives were not present at the time of marriage. However, friends of respondent No. 1 namely Shailesh Pise, Swapnil Shete and others were present. After marriage, respondent No. 1 stated that he would convince his parents. Hence, they started residing at another room and not at house of respondent No. 2 to 5. Respondents No. 2 to 5 got information of marriage after 15 days. They started threatening and abusing the applicant. On 08/12/2015 she gave birth to child Samarth. She asked about taking her to matrimonial house but respondent No. 1 refused to take her and other respondents mentally harassed her. On 15/02/2019 respondent No. 1 had not come at house of the applicant and his phone was also not reachable. The applicant inquired about respondent No. 1 but his whereabouts was not found. Hence, on 05/03/2019 she gave missing complaint at Barshi City Police station. She has no source of income. She is taking care of child Samarth. She is in need of interim maintenance to satisfy her basic needs, medical requirement and to attend the Court proceedings. Samarth is minor child. He requires medical treatment regularly as he is deaf. On the contrary, respondents are rich persons. They have

agricultural and other movable and immovable properties at Barshi. Their family business is Sagar Beer Bar. Respondents are having legal obligation to maintain the applicant and child Samarth. Hence, this application for interim maintenance of Rs. 10,000/- per month.

3. Respondents No. 1 to 5 objected this application vide reply at Exh. 34. They stated that the contentions mentioned in the application are false and not legal. The applicant has no locus-standi. Respondent No. 1 has completed his education in Arts, Science and Commerce College, Naldurg and hence, he was residing at Naldurg. During his college life, he was addicted to liquor. Hence, he was brought at Barshi and his marriage was solemnized with Shital on 25/11/2013 at Gokul Garden Solapur road, Barshi as per Hindu rites and rituals. Their marriage is still subsisting. They have one daughter and one son out of such wedlock. They performed all rites and rituals during marriage and other required legal activities. However, there was no change in his addiction towards liquor. Hence, there were frequent quarrels between respondent No. 1 and his parents. Hence, he was driven out of house and share in the properties were not given to him. Public notice was also given in newspaper that, no one should enter into transaction with him. Hence, respondent No. 1, his wife Shital and daughter Mansi went to Pune for earning livelihood. Hence, there is no relation between the applicant and respondent No. 1. Respondents No. 2 to 5 are not related to the applicant. The applicant had not changed her religion. There was no any marriage between the applicant and respondent No. 1 and they have no issues. The applicant filed this application only with intent to extract money and to live illegally with respondent No. 1. She gave complaint about missing at Barshi city police station on 28/02/2019. In that complaint the police recorded statements of respondent No. 1 and

other related persons and closed the said complaint. Thereafter also the applicant gave complaint at Barshi city police station on 24/03/2019 against respondent No. 1 and other relatives. In that complaint also police carried out inquiry and found that the complaint was not true. These complaints were filed with intent to harass respondents. The applicant has no proof of marriage because there was no any such marriage. On 15/04/2012 respondent No. 1 had not went to Tuljapur. The applicant has falsely stated about residing at flat of respondent No.3. There was no relation between them at any point of time. The applicant tries to create relation with the help of legal provisions. She filed H.M.P. No. 85/2019 at Civil Judge Senior Division Court at Barshi. In that case also the applicant had filed application at Exh. 17 for interim maintenance u/s. 24 of the Marriage Act. The said application was rejected by the Court vide order dtd. 27/01/2020. The applicant is having knowledge about marriage of respondent No. 1 but she is making false and illegal allegations with intent to create relation with respondent No. 1. As there is no any relation between the applicant and respondent No. 1, he has no obligation to maintain her. She has no right to file such application of interim maintenance. Respondents No. 1 to 5 had filed reply to the main application on 12/03/2021 and the matter was adjourned for evidence of the applicant. However, roznama shows that the matter was adjourned for 15 times for evidence of the applicant. But she has filed this interim application instead of giving affidavit of evidence. It shows that, she wants to prolong this matter by keeping pending this proceeding. They prayed for rejection of this application.

4. Perused record of the case. The main application is filed u/s. 12 of the Protection of Women from Domestic Violence Act. Respondent No. 1 disputed marriage with the applicant and he has also

disputed paternity of child Samarth. In that respect, the applicant has filed photocopy of birth certificate of Samarth at Exh. 3/1. As per this document, Samarth was born on 08/12/2015 at Sushrut Hospital, Barshi, name of his mother is mentioned as Ashvini Sagar Mhaske and name of father is mentioned as Sagar Ramchandra Mhaske. The said birth was registered on 30/12/2015. The applicant has also filed photocopy of OPD card and examination report at Unique Hospital, Solapur. On these documents dtd. 04/08/2015 name of the applicant is mentioned as Mrs. Ashvini Mhaske. She has also filed affidavit in support of her application stating that she is wife of respondent No. 1. But respondent No. 1 though denied his paternity with Samarth, he has not specifically stated name of father of Samarth or anything about relation of this applicant with any other person. That facts are also not revealed from documents of inquiry produced by the applicant in respect of complaint given by the applicant at Barshi city police station. The applicant has also filed photocopies of photographs of marriage and birthday celebration of Samarth. But still respondent No. 1 denied his relation with the applicant. But his conduct is necessary to consider while deciding this application. As per the main application, the applicant stated that respondent No. 1 stopped to visit the applicant from January 2019. Thus, it appears that their dispute started January 2019. This case was also filed on 14/03/2019. The H.M.P. petition also bears number as 85/2019. In his affidavit of income, assets and liabilities at Exh. 29, respondent No. 1 stated about pendency of another Criminal M.A. No. 208/2019. Thus, all these proceedings are of year 2019 and the birth certificate of Samarth bears date of registration as 30/12/2015 which was much prior to such litigation. The birth certificate is maintained by public authority and essential in everybody's

life. It appears from such birth certificate that birth was registered when there was no dispute and hence, it cannot be said that this document birth certificate is created only with intent to support the litigation and as a proof. Furthermore, respondents have filed registered partition deed at Exh. 36/1. In that partition deed there are 7 parties. Respondent No. 1 is party No. 4 and his business is mentioned as private service. But in his affidavit of income, assets and liabilities at Exh. 29, this respondent No. 1 stated that he is not earning income. In that said affidavit also he stated that his monthly expenses are Rs. 25,000/-. But he has not stated about source of money to pay such expenses. Further this registered partition deed was executed on 07/02/2019 and as per that partition deed, respondent No. 1 had relinquished all his rights in the properties in lieu of Rs. 1,00,000/- when the properties are valuable and worth more than Rs. 1 Crore. In the said partition also nature of some of the properties are mentioned as ancestral properties. Period of this document is also of 2019 i.e. during when dispute between the applicant and respondent No. 1 appears as started. Prima-facie all these activities of respondent No. 1 create doubt about his contentions that he has no relation with the applicant. As per section 2(f) of the said Act, domestic relationship means two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage **or through a relationship in the nature of marriage**, or adoption or family members living together as a joint family. In this case, though the applicant has not produced any clear evidence of marriage but as stated above birth certificate and circumstances prima-facie suggest relation between respondent No. 1 and Samarth and thus, prima-facie it appears that there was relation in the nature of marriage between the applicant and respondent No. 1 as

respondent No. 1 has not come with case that his relation with the applicant is illicit in nature. Hence, such application under this Act is prima-facie tenable.

5. Admittedly, respondent No. 1 is not giving money to satisfy basic needs of the applicant and Samarth. Hence, prima-facie it appears that the applicant is subjected to economic abuse which is one of the form of domestic violence. She stated that she has no source of income to maintain herself and child Samarth. Though this application is filed after long period of filing of main application, such application can be filed at any time during pendency of this proceeding. Furthermore, the photocopy of order of interim maintenance passed below Exh. 17 in H.M.P. No. 85/2019 shows that the said application was rejected citing reason that the marriage was disputed and that case was filed under Hindu Marriage Act for restitution of conjugal rights, the strict proof of marriage is must. In that order the judgment passed in ***Chanmuniya V/s. Virendra Kumar Singh Kushwaha & Ors., SLP No. 15071/2009 decided on 07/10/2010*** is mentioned. In this case also the applicant relied on this judgment. As per the said judgment, the Hon'ble Supreme Court observed in Para No. 46 that, *“we are of the opinion that a broad and expansive interpretation should be given to the term wife to include even those case where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be precondition for maintenance u/s. 125 of the Cr.P.C. so as to fulfill the true spirit and essence of the beneficial provision of maintenance under section”*. In that order at Exh. 27 the concerned Court mentioned that this applicant has every right to file such proceedings u/s. 125 of the Cr.P.C. for maintenance or other proceeding under the Act. Thus, rejection of application in that proceeding is not a

ground to reject this application for interim maintenance which is under different Act and as stated above prima-facie there is a ground to show domestic relation between the applicant and respondent No. 1. Hence, the applicant is entitled for interim maintenance to satisfy her basic needs and to maintain the child.

6. In respect of interim maintenance the applicant relied upon **Rajesh V/s. Sunita & Ors., CRR(f)- 123-2015(O&M) decided on 05/09/2018**. In this case the Hon'ble Punjab Haryana High Court observed that, *“monthly allowance is paid in order to enable the wife and the child to live by providing with the essential economic necessities. Neither the neglected wife nor the neglected child can live without funds for purchasing food and the essential articles to enable them to survive. The first and foremost duty of the husband is to maintain the wife and the child. He may beg, borrow or steal”*. The applicant also relied upon **Krishanchand V/s. Jagriti, Cri. MMO NO. 141 of 2018 decided on 23/04/2018** in that case the Hon'ble Himachal Pradesh High Court mentioned reference of Mulla Hindu Law, 14th edition dealing with the characteristic of a Hindu wife as *“a wife is entitled to be maintained by her husband, whether he possesses property or not. When a man with his eyes open marries a girl accustomed to a certain style of living, he undertakes the obligation of maintaining her in that style. The maintenance of a wife by her husband is a matter of personal obligation arising from the very existence of the relationship, and quite independent of the possession by the husband of any property, ancestral or self acquired”*. The applicant also relied upon the order passed by Hon'ble Delhi District Court in **Ashish Kumar V/s. Mamta, C.A. No. 22/2021 decided on 25/03/2021**. The applicant relied on Para No. 9 in which the argument of the appellant is mentioned as *“it was the duty of appellant as a*

husband to have first ensured that he was able to fulfill his responsibility from his income and thereafter decide about spending money on any other pursuits. Though it is not wrong to pursue higher studies, however, as a husband he has social and moral responsibility towards his wife which he cannot shirk. Ld. Magistrate, therefore, has rightly held that he cannot shirk his responsibility and has rightly assessed the income of the appellant on the basis of his last drawn salary. It was the own decision of the appellant to have given of his job to pursue higher studies despite knowing about his responsibility". On the basis of these arguments the Hon'ble Court mentioned in Para No. 13 that, "I am also of the opinion that the argument advanced on behalf of the appellant that the respondent is not entitled to maintenance on account of being capable enough to earn, is not sustainable as it has been held by Hon'ble Supreme Court in Catina of judgments that there is difference between 'earning' and 'capacity to earn'. Mere capability of the wife to earn in absence of actual earnings cannot dis-entitled her to maintenance".

7. In this case, the applicant prayed for interim maintenance of Rs. 10,000/-. She mentioned income of respondents in the main application as Rs. 15,000/- per day from Sagar Lunch Home and Beer Bar. She also stated that respondents have one agricultural land about 10 to 15 Acre and plotting land of 2 Acre. In support of her contention she has produced photographs of Sagar Lunch Home, Beer Bar and Permit Room. She has also produced 8-A extract of Gat No. 317/2 which bears name of respondent No. 2 for joint share in area of 1.25.75 Hector land. She has also produced 8-A extract of Gat No. 213 which bears name of respondent No. 2 for 92 R area of agricultural land. Further the tax receipts at Exh. 38/3, 38/4 and 38/5 bear name of respondent No. 2. However, none of these documents show complete ownership of

respondent No. 1 on these properties. But respondent No. 1 is having responsibility to maintain the applicant and Samarth. Hence, his income is material factor. The applicant has also not produced any clear document in support of contention as to income of respondent No. 1. However, this respondent No. 1 has filed affidavit of income, assets and liabilities at Exh. 29 in which he stated his income as none. But he submitted in the affidavit that his monthly expense is Rs. 25,000/- and his wife Shital, children Mansi and Shivansh and parents are depending upon him. But as stated above, the partition deed at Exh. 36/1 shows that occupation of respondent No. 1 is private service. Further these respondents also submitted that he went to Pune to earn livelihood. These facts show that respondent No. 1 has capacity to earn money and interim maintenance cannot be denied on the ground that he has no income as held in **Rajesh** case cited supra.

8. The applicant has produced affidavit of income, assets and liabilities at Exh. 22 in which she stated her monthly expenses as Rs. 20,500/-. She has also stated that expenses of Rs. 21,000/- is required for auditory training and speech language therapy of Samarth. She has also produced medical documents of Samarth showing requirement of medical expenses. She stated on oath in affidavit of income that she availed loan of Rs. 2 Lakh. No doubt requirement of claimant is material factor in deciding such interim maintenance but as stated above the applicant has not clearly produce any document to show that respondent No. 1 earns Rs. 50,000/- per month as per her affidavit of income at Exh. 22. Mere filing of photograph is not sufficient to show huge income. Income and capacity to pay of respondent No. 1 is also material factor. His other children and Shital are also depending on him. Under such circumstances, it is necessary to give interim maintenance to satisfy basic

needs of the applicant and her child. Though the child is not party to this main proceeding, being a mother she is in need of money to maintain child and that is material factor for deciding interim maintenance application. With due respect facts in this case are different from facts mentioned in above cited cases. As there is no clear document to show income of respondent No. 1 and considering abovesaid peculiar facts of the case, it is appropriate to give interim maintenance of Rs. 5000/- per month to the applicant for her maintenance and for maintaining child Samarth. Hence, following order-

ORDER

1. Application is partly allowed.
2. Respondent no.1 is directed to pay Rs. 5000/- per month towards interim maintenance to the applicant from the date of filing of this interim application till further order.

Date- 22/04/2022

(R.S. Dhadake)

Place- Barshi

Judicial Magistrate First Class, Barshi

CERTIFICATE

I affirm that contents of this PDF file Order /Judgment are same word to word, as per the original Order /Judgment.

Name of Stenographer : Shaikh A.G. Steno Grade-III

Court : Judicial Magistrate F.C., Barshi

Judgment / Order date : 22/04/2022

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