

MHYA210021732020

**ORDER BELOW EXH.02**(Passed on 09<sup>th</sup> day of October, 2021)

By the instant application, the applicants have prayed for to allow interim monetary order against non-applicants pending the case vide Section 23 of the Protection of Women form Domestic Violence Act, 2005 (Here-in-after it is referred to in short as “the D.V.Act”)

02. Read the instant application and say of non-applicants filed below Exh.17. Heard the learned Advocates of the respective parties. Perused record and proceeding of instant case.

03. As per the applicants, the marriage of applicant no.1 was solemnized with non-applicant No.1 on 27.05.2011 at Wani and thereafter she went to the house of non applicant no.1 for cohabitation. Applicant no.2 and 3 are their children born out of wedlock. Non applicant No.2 and 3 are relatives of non applicant no.1. After few days of cohabitation, non applicant no.1 came in drunken state and beaten applicant no.1 up with no reason and he also raised doubt on her character. Non applicant no.2 and 3 instigated non applicant no.1 for ill-treatment and accordingly he ill-treated her with petty issues. Non applicant no.2 and 3 have also ill-treated applicant no.1 and insulted her. Non applicants asked applicant no.1 to divorce non applicant no.1 as he did not want to cohabit with her and gave ill-treatment for said reason. On 18.06.2020 non applicant no.1 assaulted applicant no.1 in presence of her brother at his sister's house. Applicant no.1 also forced to reside at Wani and thereby, she fetched thereto with threatened to cause her death if she returned. So, since then she resides at Wani on the mercy of her parent along-with applicant no.2 and 3. Since non applicant no.1 provide them no financial support despite having sufficient means of earning. Thus, she filed the application under Section 12 of the D.V. Act along with interim application.

04. On the contrary, non-applicants denied the contention and any act of domestic violence caused to applicant no.1. They admitted the relations with applicant no.1 as wife of non-applicant no.1 and applicant no.2 and 3 being their children. They denied allegations leveled against them. They contended that non applicant no.2 and 3 are not in the domestic relationship with applicant no.1 and they have no concerned with, despite they falsely implicated in the instant crime merely for harassment without any caused against them. They also contended that applicant no.1 is a short temper lady and she raised quarrel with non-applicants with no reason. Applicant no.1 is in habit of talking on mobile for a day long and asking about she insulted non applicant no.1 and humiliated him raising quarrel and also threatened them to implicate in false police report. They further contended that on 02.02.2020 non applicant no.1 found applicant no.1 talking with someone else on mobile against which he asked about but she raised quarrel and insulted him and therefore, he called her parents and gave her understanding. Despite, on 21.05.2020 he also found applicant no.1 calling on mobile and on asking about the same she asked another chance forgiving her. They further contended that he fixed C.C.T.V. in house with no knowledge of applicant no.1 on suspicious of her behavior and on 17.06.2020 he shock to found footage that applicant no.1 with unknown person in compromise condition and thereby, he realized that she is in extra marital affairs and therefore, he asked her but she raised quarrel and insulted him. They further contended that he called the parents of applicant no.1 and narrated them the incident against which they fetched her to Wani and since then she resides thereat refusing to come for cohabitation inspite repeatedly called. They further contended that non applicant no.1 on his less amount of salary unable to provide monitory assistance to applicants which she filed the application merely to grab money and harassing them. They have further contended that they have made no act of domestic violence against applicant rather they suffered at her hands by acts of domestic violence. Thus, they prayed for to reject the application.

05. Upon hearing the parties and perusal of record, only question arise for determination is whether the application discloses the prima-facie domestic violence caused the applicant while she is in domestic relationship with non-applicants and whether she needs interim relief of monitory order as prayed for.

06. At the outset, it would be very appropriate to first mention the undisputed fact on record in between the parties to the matter for better consideration of issue of interim application. It is undisputed in between parties that the applicant is legally wedded wife of non-applicant No.1 being their marriage admittedly solemnized on 27.05.2011. It is also undisputed fact on record that relations of applicant no.1 with non-applicant No.1 being husband having two children applicant no.2 and 3 and also non-applicant Nos.2 & 3 being relatives of non-applicant No.1. It is further undisputed fact on record that the marital relations of applicant no.1 and non-applicant No.1 and their matrimonial ties is still subsisted. It is further undisputed fact on record in between the parties that now the applicant residing at the house of her father at Wani since she came to Wani.

07. It has appeared from the pleadings of the parties that only controversy in between the parties to the petition is in respect to reason of residing of the applicant at her parent's house at Wani and false crime registered against them. It has also appeared from the rival pleadings of the parties that the applicant alleging domestic violence caused to her at the hands of non-applicants when she has been in domestic relationship with them which forced her to reside at her parent's house. On the other side, non-applicants alleging no domestic violence caused to applicant no.1 and she resides at her parent's house with her own accord and no reason merely for their harassment and grabbing money from non-applicant No.1.

08 For searching the prima-facie case of domestic violence, I would like to carefully go through the material on record along the pleading of the parties.

09. It has appeared from the record that the marital relationship between the parties is yet not dissolved but, they are not residing in same roof and used to reside separately with their own reservations. Considering allegations levelled hereunder by applicants against non-applicants and reply to allegations of non-applicants against applicant no.1 clearly shows matrimonial dispute in between the parties which reached to the Court of law.

10. A perusal of averment of the petition and instant application, it appears that there are several instances narrated hereunder by applicant in respect to allege ill-treatment against her at the hands of non-applicants with detailed nature of its

occurrence with manner. These instances of ill-treatment alleged to be caused to applicant while she has been in domestic relationship with non-applicants are made supported with her affidavit filed on record.

11. It has clearly appears from the record that there is prima-facie material available on record that they have some differences and dispute in respect to their relationship which make the case clear that there is matrimonial dispute in between the parties and applicant filed application under D.V.Act. These substances are also supports from the documents filed on record by the applicant below list (Exh.04). These contentions raised by applicant woman against non-applicants is also find supported by the domestic incident report (Exh.08) submitted on record by the Protection Officer showing prima-facie incident of domestic violence caused to applicant at the hands of non-applicants in their inquiry. These materials are substantiating the contention raised by the applicant under the matter. Not only these materials but also the application filed supported with an affidavit of applicant shows the prima-facie case in view of Section 23 of the D.V.Act.

12. It is very relevant to note here that it is the social, moral, and legal obligation of non-applicant No.1 being husband of applicant no.1 and being father of applicant no.2 and 3 to provide them good food, cloths and shelter and just life and also look after their well beings. Applicant No.1 has filed on record her asset declaration on affidavit below Exh.23 showing her financial condition along-with financial capacity of her husband non-applicant No.1 and other non-applicants. On the other side, non-applicant No.1 filed on record his asset declaration on affidavit below Exh.24 with documents below List (Exhs.26) showing his liabilities.

13. The present matter is at initial stage and required time to dispose of the controversy in between the parties. Therefore, till decision of their controversy in the instant case, applicants should not be kept in waiting for monetary assistance from husband and father who having social, moral and legal obligation to maintain his legally wedded wife and son, particularly in a case, non-applicant No.1 is salaried and well able-bodied person having responsibility of applicants as well. Despite, it being the case, it is not the case of non-applicants that he provides financial assistance to applicants.

14. In the given set of facts and circumstances, the material on record is sufficient to hold, at this juncture while deciding interim application, prima facie substance of domestic violence as defined under Section 3 of the DV Act caused to applicant No.1 at the hands of non-applicants while she has been in domestic relationship with them. In view of the matter, I am of the opinion that application discloses prima-facie domestic violence caused to applicant at the hands of non-applicants while she is in domestic relationship with them. Therefore, applicants are entitled for interim protection order and monitory order for maintaining themselves pending the case.

15. The learned Advocate of applicants placed heavy reliance upon the recent judgment of the Hon'ble Supreme Court in **Rajnish vs Neha** (Criminal Appeal No.730 of 2020 arising out of SLP (Crl.) No.9503 of 2018 decided on 4 November, 2020) wherein several directions issued in respect to maintenance matters of the matrimonial dispute case. As per the direction of the Hon'ble Supreme Court in case of **Rajnish vs Neha** (Supra), Clause II of the Part B provides for Payment of Interim Maintenance. Sub-clause (v) provides that "On the basis of the pleadings filed by both parties and the Affidavits of Disclosure, the Court would be in a position to make an objective assessment of the approximate amount to be awarded towards maintenance at the interim stage. Clause III of the Part B also deals with a Criteria for determining quantum of maintenance: (i) The objective of granting interim / permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded. The Hon'ble Supreme Court also went on to observe under Clause VI Final Directions of the Part B that in view of the foregoing discussion as contained in Part B – I to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India. Under sub-clause (b) of Clause VI, directions for Payment of Interim Maintenance issued as "The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrates Court, as the case may be, throughout the country.

16. In this case, both the parties have filed on record the asset declaration on affidavit at Exh.23 showing applicant's financial condition along-with her husband's financial capacity and assets declaration on affidavit below Exh.24 showing the financial capacity and liabilities of non-applicant no.1.

17. It is contended by applicant No.1 that non-applicant No.1 earned ₹35,000/- monthly from his service and ₹1,00,000/- per annum from four Acre agricultural land with no responsibility of other non-applicants and thereby, he able to provide them monetary assistance which they in dire need. On the other side, it is contended by non-applicants that non-applicant No.1 earned very less salary. In his affidavit of asset, he stated to be earned only ₹25,190/- per month salary wherein he needed it for maintaining himself and other non-applicants and therefore, he unable to provide maintenance to the applicant.

18. Non applicant no.1 denied to have other income from agricultural land. Therefore, it is upon applicants to file some material on record to show such income to accept it for prima-facie earning but no such material are being filed on record.

19. The asset declaration on affidavit of non applicant no.1 (Exh.24) clearly shows the earning as ₹25190/- monthly. The documents filed by him below list Exh.26 shown that non applicant no.1 earned gross income a year of ₹4,45,016/- and total salary he received as ₹4,95,216/-. The salary certificate filed below list (Exh.26) clearly shows the total emolument as ₹41,781/- along-with basic, HRA, DA and other allowances wherein total Government recoveries shown as ₹9,361/- and non Government recoveries as ₹7,232/- with net pay of ₹25,190/-. On the combine perusal of salary certificate of non applicant no.1 for the month of July-2021 and form No.16 clearly shows the sound earning of non applicant no.1 monthly. It is settled in law that the gross earning that too total emolument is need to be considered and not the net pay after several deductions. Therefore, the total emolument of non applicant no.1 i.e.of ₹41,781/- is total monthly earning he received is taken into consideration for deciding his monthly earning of salary. Taking into consideration the monthly salary of non-applicant no.1 along-with his valid monthly spending, it can safely be inferred that his financial responsibility is sound one able to provide monetary assistance to his wife and children.

20. Section 20(2) of the DV Act speaks about the monetary relief granted under this Section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. While granting interim monetary relief under Section 23 read with Section 20 of the DV Act, these essentials also required to be taken into consideration.

21. Having considered the social background of the parties and their likelihood coupled with financial soundness and the standard of living of non-applicant no.1 and his liabilities, applicants require same standard of leaving for surviving in today's costly world. Therefore, granting of an amount of ₹5,000/- per month to applicant No.1 and ₹3,000/- per month each to applicant no.2 and 3 as an interim monetary relief from the date of application is appeared to be fair, just and reasonable and also consistent with same standard of living which non-applicant No.1 is accustomed. Thus, I pass the following order.

**ORDER**

1. The instant application (Exh.02) is hereby partly allowed.
2. Non-applicant No.1 Satyapal Meghraj Pimpalshende do pay an amount of ₹5,000/- (Five Thousand only) per month to applicant No.1 Sau.Megha Satyapal Pimpalshende and ₹3,000/- (Three Thousand only) per month each to applicant No.2 Ku.Divya Satyapal Pimpalshende and applicant no.3 Ku.Anjali Satyapal Pimpalshendne as an interim monetary relief from the date of application i.e., 19.09.2020 pending the case.
3. The copy of the order shall be given to the parties free of cost.
4. Copy of the order shall be forwarded to Protection Officer and concerned Police Station for necessary compliance.
5. Both the parties to Note.

Date: 09.10.2021.

(K.K. Chafale)  
Judicial Magistrate (First Class),  
Wani.