

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 32 OF 2014

Koushik S/o. Anil Gharami,
Aged about 40 years,
R/o House NO.59, Shayamapalli
Khajurikala, Piplani, Bhopal-462022
Tahsil Hujur and District : Bhopal(MP)

.... **PETITIONER.**

// **VERSUS** //

1. Sau. Sangeeta Koushik Gharami,
aged about 36, Occu. Service,
2. Ku. Gayatri Sangeeta Gharami,
3. Ku. Astha Sangeeta Gharami,
Age about 6 years,

Respondent No.2 and 3 being minors are
represented by their ad-litum mother the
Respondent Nos. 1 to 3 all are R/o. C/o.
Thakurdas Mahaldar, Post : Alapalli,
Tahsil : Aheri, District : Gadchiroli.

.... **RESPONDENTS.**

Mrs. Sonali Saware, Advocate with Petitioner.
Mr. C.M.Munje, Advocate with the respondent No.1.

CORAM : M.L. TAHALIYANI, J.
DATED : MAY 05, 2014.

ORAL JUDGMENT :

1. Heard.

2. **ADMIT.** Heard finally by consent of the parties.

3. A short question that arises for determination in present writ petition is, as to whether the minor children of the aggrieved person are entitled for maintenance under Section 20 of the Protection of Women from Domestic Violence Act, 2005 if the trial Magistrate has come to a conclusion that the domestic violence has not been proved.

4. Admittedly, the petitioner is husband of respondent No.1 and father of respondent Nos.2 and 3. Respondent Nos.1, 2 and 3 filed an application under Section 12 of the Domestic Violence Act, 2005 in the Court of Judicial Magistrate First Class, Aheri. The said application was heard on merits and following points were framed by the Magistrate for determination:

1. Does Applicant No.1 prove that she was subjected to Domestic Violence by Non-applicant No.1 as alleged in the application ?
2. Do the applicants are entitled for relief claimed in their claim clause
3. What order ?

The learned Magistrate had answered point No.1 in negative and point No.2 was answered partly in affirmative. The learned Magistrate had come to a conclusion that respondent No.1 had not been able to

establish that she was subject to domestic violence by the petitioner. The learned Magistrate has also come to a conclusion that respondent No.1 was not entitled for any monetary relief. However, monetary relief was granted to respondent Nos. 2 and 3. The final order of the learned Magistrate runs as under :

- “1. The application is partly allowed.*
- 2. Non-Applicant No.1 shall pay Rs.2000/- per month to Applicant No.2 and 3 each, for their education, from the date of application.*
- 3. Non-Applicant No.1 shall pay Rs.1000/- per month to applicant no.2 and 3 each, for their maintenance (monitory relief) from the date of application.*
- 4. parties to bear their own cost.*
- 5. The amount received by Applicant No. 2 and 3 under interim order, Exh.No.18, be set off against the amount as mentioned above.”*

5. The petitioner had filed a criminal appeal against the said order of the learned Magistrate. The said Criminal Appeal was also dismissed on 9th December, 2013.

6. As already stated, the question that arises, whether respondent Nos.2 and 3 could be granted any monetary relief despite the fact that domestic violence could not be proved by respondent No.1. In this regard, one will have to refer to certain provisions of the Protection of Women from Domestic Violence Act. ‘Aggrieved Person’ has been defined in Section 2(a) of the Protection of Women from Domestic Violence Act, 2005 :

“2(a) “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;”

7. Chapter IV deals with ‘Procedure for obtaining orders of reliefs’. Section 12 lays down the procedure for presenting application before the concerned Magistrate. Sections 18 and 19 of the Act deal with ‘Protection Orders’ and ‘Residence Orders’, respectively. Section 20 deals with **‘Monetary Relief’**.

8. In the present petition, this Court is concerned as to whether any monetary relief could have been given to respondent Nos. 2 and 3. Section 20 of the Protection of Women from Domestic Violence Act, 2005 lays down :

“20. Monetary reliefs.- (1) While disposing of an application under sub-section (1) of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to -

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973(2 of 1974) or any other law for the time being in force.”

9. It is thus, clear that the monetary relief is available for the children of the aggrieved person if the monetary relief is required to meet the expenses incurred by the aggrieved person as a result of domestic violence. The monetary relief is also permissible in case losses are suffered by the aggrieved person as a result of the domestic violence. The monetary relief is available to children of the aggrieved person under Section 20 of the Act. However, the aggrieved person is under obligation to establish that she had to meet the expenses incurred and losses suffered due to domestic violence on the part of the respondent. In the present case, since the learned Magistrate has come to a conclusion that the domestic violence could not be proved and since that finding of the learned Magistrate has not been challenged by the aggrieved person, it follows that no relief could have been given to respondent Nos. 2 and 3 also.

10. In my considered opinion, the learned Magistrate had committed an error in granting monetary relief to respondent Nos. 2 and 3 despite the fact that domestic violence could not be established. Though it is possible to say that the maintenance was permissible for respondent Nos. 2 and 3 (minor children) under Section 125 of the Code of Criminal Procedure, the monetary reliefs could not have been given to them under Section 20 of the Protection of Women from Domestic Violence Act, 2005. The view taken by the learned Magistrate and the appellate Court, in my opinion, is not correct and hence, I pass the following order.

- i. The writ petition is allowed.
- ii. The order passed by learned Magistrate in Misc. Criminal Case No. 27 of 2011 on 12th March, 2013 and the order passed by the learned Sessions Judge, Gadchiroli in Criminal Appeal No. 14 of 2013 on 9th December, 2013 are set aside.
- iii. The amount of Rs. Twenty Five Thousand, deposited by the petitioner in this Court shall be refunded to him immediately.

The petition stands disposed of accordingly.

JUDGE

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