

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 60 OF 2018

1. Shri Vjayanand Dattaram Naik,
Son of Shri Dattaram Shembu Naik,
Age 49 years, service, married,
R/o H. No.8, Valpoi, Sattari, Goa.
2. Laximi Dattaram Naik,
Widow of Dattaram Naik,
major in age, household,
R/o H. No.8, Valpoi, Sattari, Goa.
3. Kumudini Premanand Naik,
Alias Medhini Premand Naik,
major in age,
R/o H. No.8, Valpoi, Sattari, Goa.
4. Neeta alias Shanti Vinayak,
Rane, by other name Neeta
Dattaram Naik, daughter of
Dattaram Shambu Naik,
Wife of Vinayak Rane, major in age,
Household/service, R/o H. No.8
Valpoi, Sattari, Goa, also resident
of G.R.P. Quarters, Bldg., no. A/2, room no.7,
Altinho Goa.
5. Vinayak Naik,
major of age, service,
R/o H. No.8,
Valpoi, Sattari, Goa, also resident
of G.R.P. Quarters, Bldg., no.A/2, room no.7,
Altinho Goa.Applicants.

V e r s u s

1. Smt. Vishranti Vijayanand Naik,

Wife of Shri Vijayanand Naik,
 34 years of age, married,
 Indian National, housewife
 Resident of near Old Bus Stand,
 Valpoi, Sattari, at present residing at
 Parabwada, Painter Krishna House,
 Paliem, Pedne, Goa.

2. Prema Vishwanath Naik,
 Major of age, household,
 R/o H. NO.8, Valpoi,
 Sattari, Goa..... Respondents.

Adv. Agha Iftikhar for the Applicants.

Adv. A. D. Bhobe for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 13th February 2019.

Oral Judgment:

Rule, made returnable forthwith. The learned counsel for the contesting respondent no.1 waives service. Heard finally by consent of parties.

2. The first respondent along with her minor son Vishwatta V. Naik had filed a domestic violence petition no.1/2013 against the petitioner before the learned Judicial Magistrate First Class at Pernem. By an order dated 10/3/2017 the learned Magistrate partly granted the application in terms of section 20 of the Protection of Women from Domestic Violence Act, 2005 (Act, for short) directing the petitioner to pay a monthly maintenance of Rs.5000/- to the first respondent for herself as well as of the child. The

reliefs sought under section 18, 19 and 22 of the Act were rejected. The first respondent feeling aggrieved by the same filed Criminal Appeal no.47/2007 before the Additional Sessions Judge, Mapusa. The Addl. Sessions Judge by a judgment and order dated 24/7/2018 has partly allowed the appeal by enhancing the maintenance to Rs.7000/- p.m. from the date of the impugned order i.e. 10/3/2017 along with some other reliefs. Feeling aggrieved the petitioner is before this Court.

3. I have heard Shri Agha, the learned counsel for the petitioner and Shri Bhobe, the learned counsel for the first respondent.

4. It is submitted on behalf of the petitioner that there is no finding of any act of domestic violence being committed by the petitioner against the first respondent. The learned counsel has taken me through the points framed by the trial court in para 6 of the impugned judgment, wherein the point nos. 1 to 5, 8, 9 and 10 have all been answered in the negative and the point nos.6, 7 and 11 are partly answered in the affirmative. It is submitted that the finding about the wife (original complainant) being subjected to any act of domestic violence is a sine qua non for the magistrate to grant any relief under the Act and in the absence of any such finding the Courts below were in error in granting the relief. Reliance on behalf of the petitioner is placed on the

decision of this Court in the case of **Koushik S/o Anil Gharami Vs. Sau. Sangeeta Koushik Gharami & Ors. 2014 ALL MR (Cri) 2398** and **Mr. Gurudas Sanvalo Naik and others Vs. Mrs. Saanvi Gurudas Naik and anr, 2018 ALL MR (Cri) 2375.**

5. Mr. Bhobe, the learned counsel for the first respondent in all fairness did not dispute that there is no finding of any act of domestic violence being committed by the petitioner. He, therefore, submitted that appropriate order may be passed. He submits that the first respondent shall take recourse to any other remedy as may be available in law.

6. Mr. Agha, the learned counsel for the petitioner, on instructions, submits that the petitioner shall continue to pay the maintenance of Rs.5000/- per month for a limited period to the first respondent for herself and for the minor son and this shall be without prejudice to the rival contentions of the parties.

7. In the result the following order is passed;

ORDER:

(i) The petition is allowed.

(ii) The impugned orders are hereby set aside leaving it open to the first respondent to take recourse to any other remedy as may be available in law

and if so advised.

(iii) The petitioner shall, however, continue to pay maintenance at the rate of Rs.5000/- per month to the first respondent for herself and to the minor son for a period of six months from today.

(iv) This shall be subject to any order that may be passed by the competent court in any proceeding that the respondent no.1 chooses to initiate.

(v) In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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