

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 63 OF 2014**

Mr. Wilson Roy Pinto,
28 years of age,
Son of Eugene Canute Pinto,
Permanent R/o. A/S-2,
Behind Hotel Solmar Exotica,
Alto Porvorim, Bardez-Goa,
Presently working in Germany,
Represented herein by his
Constituted Attorney
Mrs. Precilla Pinto,
55 years of age, wife of
Eugene Canute Pinto,
Permanent R/o. A/S-2,
Behind Hotel Solmar Exotica,
Alto Porvorim, Bardez-Goa,
(Constituted vide POA dated
27/12/2012 executed before Notary
Meera Medhekar, having office at
Pinto Chambers, S.V. Road,
Panjim-Goa and Registered under
No. 13547 dated 27/12/2012)

... Petitioner.**Versus**

1. Ms. Savia Julia Fernandes,
Daughter of Jones Francis Fernandes,
C/o. Arvind Menezes,
Flat No.A/S-79, Goa Housing Board,
Behind Pundalik Temple, Alto-Porvorim,
Bardez-Goa.
2. State of Goa
Through the Public Prosecutor,
with office at Altinho – Panaji-Goa

... Respondents.

Mr. Prasheen Lotlikar, Advocate for the petitioner.
Mr. Joseph Vaz, Advocate for the respondent No.1.

Coram :- U. V. Bakre, J.

Reserved on :- 21st January, 2015.

Pronounced on :- 27th January, 2015.

ORDER :

Heard Mr. Prasheen Lotlikar, learned counsel for the petitioner and Mr. Joseph Vaz, learned counsel for the respondent No.1.

2. By this petition, the petitioner has taken exception to the order dated 06/02/2014 passed by the learned Additional Sessions Judge, (F.T.C.), North Goa, Panaji (Appellate Judge) and the order dated 03/04/2013 passed by the learned J.M.F.C., Mapusa, Goa (Trial Judge) in Maintenance Application No.10/12/A. The petitioner is the respondent whereas respondent No.1 is the applicant in the said Criminal Application No. 10/12/A, which has been filed by the applicant under Section 125 of Code of Criminal Procedure. Parties shall hereinafter referred as per their status in the said Criminal Application No. 10/12/A.

3. The applicant has filed the said Criminal Application praying therein to direct the respondent to pay to her an amount of ₹ 50,000/- per month as maintenance. In the said application, the applicant had filed an application for interim maintenance of ₹ 30,000/- per month.

4. The applicant and the respondent are husband and wife, their marriage being registered before the Sub Registrar, Mapusa on 10/11/2009. According to the applicant, after the marriage, the respondent started harassing the applicant. The applicant stated that the respondent is working abroad for Infosys Technology in Germany and drawing a salary of about ₹ 2,00,000/- in Germany and additional salary of ₹ 22,000/- in India. The applicant stated that she is an electrical engineer qualified from Goa Engineering College and had taken up job at Mumbai and was working for M/s. Accenture, but presently she is jobless. The applicant alleged that the respondent has not been sending any money to her and therefore she requires the said amount for her maintenance.

5. The respondent filed reply resisting the application. The applicant stated that at Germany he receives the salary of 3000 Euros but he has to shell out an amount of 2800 Euros towards house rent, electricity, heating and other miscellaneous necessities due to high standard of living there and therefore his savings are low and thus he is not in a position to pay the applicant the maintenance amount as he also has to look after his retired parents. The respondent stated that he used to regularly provide money to the applicant or transfer money into her

bank account being Savings Account No. 00000030749554080 with SBI Bank, Hyderabad towards her requirements and also used to keep the applicant comfortably and cater to all of her needs.

6. By order dated 03/04/2013, the learned Trial Judge partly allowed the application for interim maintenance thereby directing the respondent to pay to the applicant a sum of ₹ 25,000/- per month as from January - 2011 till the disposal of the main application and to pay the said amount on or before fifth of every month and to pay arrears within three months from the date of order.

7. Aggrieved by the said order dated 03/04/2013 passed by the learned Trial Judge, the respondent approached the learned Appellate Judge. By impugned order dated 06/02/2014 passed in Criminal Revision Application No.50/2013, the Appellate Judge dismissed the said revision application thereby maintaining the order of the Trial judge. Therefore the respondent is before this Court.

8. The applicant has filed her affidavit-in-reply in the present petition stating that the petitioner is gainfully employed in Germany and draws a salary of 3000 Euros besides other perks, but still is subjecting the applicant to harassment and humiliation. The applicant stated in the reply that she is unemployed and though she is trying for a job at

various places she is not getting the same and even otherwise the respondent is bound to maintain her.

9. Mr. Lotlikar, learned counsel for the respondent, submitted that the Appellate Judge could not have maintained the order of the Trial Judge since the same was cryptic and without any reasons. He submitted that admittedly the applicant is qualified person and could earn. He therefore urged that directing the respondent to pay interim maintenance of ₹ 25,000/- per month is harsh and unreasonable. He pointed out that in the main application as well as in the application for interim maintenance there is no averment that the applicant cannot maintain herself. The learned counsel relied upon the order dated 28/04/2009 passed by the Hon'ble Supreme Court in Criminal Appeal No. 879/2009 **(Bhushan Kumar Meen vs. Mansi Meen @ Harpreet Kaur)**.

10. On the other hand, Mr. Vaz, learned counsel for the applicant submitted that under Section 125 of the Criminal Procedure Code, the husband is bound to maintain his wife who is unable to maintain herself. He submitted that at the relevant time one Euro had the value about ₹ 75/- and therefore admittedly the respondent is earning about ₹ 2,00,000/- per month. He submitted that absolutely no evidence of whatsoever nature has been produced by the respondent to establish that he spends 2800 Euros per month. He submitted that it is impossible to

believe that the respondent is making such a huge expenditure. The learned counsel pointed out that the applicant has otherwise claimed maintenance of ₹ 50,000/- but during the pendency of the main application, only ₹ 25,000/- per month has been awarded as interim maintenance. He submitted that the parents of the respondent are retired persons and they enjoy retirement benefits and therefore they are not maintained by the respondent. The learned counsel pointed out from the reply filed by the respondent that earlier he was looking after the respondent and used to send money to her, but suddenly now he has stopped. He submitted that no case has been made out for setting aside the order of the lower Courts, in the exercise of writ jurisdiction. Learned counsel relied upon the Judgment of the Hon'ble Supreme Court in the following cases:

- i) ***“Vinny Parmvir Parmar vs. Parmvir Parmar, reported in (2011) 13 SCC”***
- ii) ***“Mangat Mal (Dead) and another vs. Punni Devi (Smt) (Dead) and others, reported in (1995) 6 SCC”***

11. I have gone through the entire material on record and also the impugned orders. I have considered the submissions advanced by the learned Counsel for the parties and the Judgments relied upon.

12. In the case of ***“Vinny Parmvir Parmar”*** (supra), the Hon'ble

Supreme Court has observed that no fixed formula can be laid for fixing the amount of maintenance and that the same has to be in the nature of things which depend on various facts and circumstances of each case. In paragraph 11 of the Judgment, the Hon'ble Supreme Court has observed thus:

“In Chaturbhuj v. Sita Bai which also relates to maintenance claim by deserted wife under Section 125 of the Code of Criminal Procedure, 1973. The following statement in SCC para 8 is relevant which reads as under : (SCC p. 320)

8.... where the personal income of the wife is insufficient she can claim maintenance under Section 125 Cr.P.C. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In Bhagwan Dutt v. Kamla Devi it was observed that the wife should be in a position to maintain a standard of living which is neither luxurious nor penurious but what is consistent with the status of a family. The expression 'unable to maintain herself' does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 CrPC.”

13. In the case of **“Mangat Mal (Dead) and another”** (supra) the Hon'ble Supreme Court has held that maintenance includes residence and money for necessary expenditure. It is observed that maintenance is

given so that the lady can live in that manner more or less to which she was accustomed. The concept of maintenance means, therefore, include provision for food and clothing and the like and take into account the basic need of a roof over the head. It is held that the provision for residence may be made either by giving a lumpsum in money, or property in lieu thereof.

14. It is well settled that the object of the proceedings for maintenance is to prevent vagrancy by compelling a person to support his wife or child or father or mother unable to support itself. The provisions of chapter IX are not in nature of penal provisions but are only intended for the enforcement of a duty a default in which may lead to vagrancy. It may be true that the applicant has not specifically stated in the main application as well as in the application for interim relief that she is unable to maintain herself. There is also no dispute that the applicant is an electrical engineer qualified from Goa Engineering College and has previously done job. However presently the applicant is without job and it is not the case of the respondent that she has some other source of income in order to maintain herself. The main application under Section 125 of Criminal Procedure Code would take its own time for disposal since evidence of both the parties will have to be recorded therein. Admittedly, at least the respondent is earning 3000

Euros per month which is more than ₹ 2,00,000/- per month. No prudent man would believe that out of the said 3000 Euros, the respondent would be spending 2800 Euros towards house rent, electricity and other miscellaneous necessities, howsoever high the standard of living may be. Be that as it may, the respondent has not produced any evidence at all to establish that he is spending so much amount. When the respondent is earning such a big amount, paying interim maintenance of ₹ 25,000/- to the respondent who is admittedly his wife, cannot be said to be unreasonable. It appears that the petition for divorce has been filed. The applicant requires money not only to maintain herself but also to contest the legal proceedings. The fact that the applicant is jobless and the fact that there is no other source of income for her, only means that the applicant is unable to maintain herself and we are only at the interim stage. I am of the considered view that the present is not a fit case for exercise of jurisdiction under Article 226 of the Constitution of India.

15. There is no substance in this petition at all and it deserves to be dismissed and is rejected, accordingly.

U. V. BAKRE, J.

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