

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 92 OF 2015**

Shri Prassada Vinaica Fatorpecar
@ Prasad Phaterpecar, aged 48 years,
resident of House No. 801 (old)/973(new),
"Yeshwanti", Alto Torda,
Salvador-do-Mundo, Bardez, Goa.

... Petitioner

Versus

Smt. Roshnee Bhana Fatorpecar,
daughter of late Javahirlal Bhana,
age 47 years,
permanent resident of 61,
Albatross Street, Extension 1,
Lenasia, Gauteng,
1827, South Africa,
presently residing at Porvorim,
Bardez, Goa.

... Respondent

Shri S. Lotlikar, Senior Advocate with Ms. M. Furtado, Advocate for
the Petitioner.

Shri John Abreu Lobo, Advocate for the Respondent.

CORAM:- C. V. BHADANG, J.

DATED:- 6th AUGUST, 2015

JUDGMENT:

Rule. Rule made returnable forthwith. Shri Lobo, the
learned Counsel waives service for the respondent. Heard finally,

by consent of the learned Counsel for the parties.

2. By this petition, the original respondent is challenging the judgment and order dated 18.02.2015, passed by the learned Additional Sessions Judge in Criminal Appeal No. 104/2014. By the impugned judgment, the appeal filed by the petitioner has only been partly allowed, thereby modifying the order dated 24.07.2014, passed by the learned Judicial Magistrate First Class, Mapusa, in a case under the Domestic Violence Act.

3. The brief facts are that, the parties are husband and wife. The respondent is from South Africa and is also a national of the said Country. The respondent is staying alongwith her old aged mother in South Africa. It appears that after marriage, disputes and differences arose between the parties. The respondent filed proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005, before the learned Judicial Magistrate First Class at Mapusa, claiming various reliefs including maintenance, cost of litigation and alternate accommodation. It appears that by an interim order dated 24.07.2014, the learned

Magistrate granted interim maintenance at the rate of Rs.38,000/- per month, to the respondent from the date of the application, alongwith Rs.6,000/- per month, towards cost of litigation. The petitioner was also directed to provide the respondent, alternate accommodation of the same level as the shared household (a flat in Akar Heights), either on ownership or on rental basis. This was challenged by the petitioner in appeal, before the Sessions Court. The learned Sessions Judge found that the order as regards grant of maintenance at the rate of Rs.38,000/- per month and cost of litigation at the rate of Rs.6,000/- per month, was legal and proper. However, the learned Sessions Judge partly modified the order as regards alternate accommodation (of the same level as the shared household). Instead, the learned Sessions Judge has directed the petitioner, to provide the respondent alternate accommodation at Mapusa, taking into account the standard of living of the respondent. The order was modified on finding that the respondent was not shown to have resided in the shared household at Akar Heights and she is required to come to India and occupy the residential premises temporarily for a limited period. Feeling aggrieved, this petition is filed.

4. I have heard Shri Lotlikar, the learned Senior Counsel for the petitioner and Shri Lobo, the learned Counsel for the respondent. With the assistance of the learned Counsel for the parties, I have perused the impugned orders.

5. It is submitted by Shri Lotlikar, the learned Senior Counsel for the petitioner that the order as regards grant of interim maintenance at the rate of Rs.38,000/- is total arbitrary and illegal, particularly, in the absence of any material to show the income of the petitioner. It is submitted that although, the petitioner is in real estate business, in a suit filed by the respondent, there is an order by which the petitioner is restrained from transferring or creating third party interest in various properties, as a result of which, the petitioner is precluded from doing his business. It is submitted that the order passed by the learned Magistrate, directing payment of Rs.38,000/- as interim maintenance is only based on some entries, in the Bank Account of the respondent, on the basis of which it was claimed that the petitioner had paid these amounts, to the respondent by way of maintenance. It is submitted that the quantum of the maintenance granted, as also the quantum of

litigation expenses are exorbitant. Even, insofar as the residential accommodation at Mapusa is concerned, it is submitted that once, the learned Sessions Judge has found that the respondent never resided in the shared household and she only occasionally comes to India and would be temporarily occupying such premises, no order directing provision of residential accommodation at Mapusa, could have been granted.

6. On the contrary, it is submitted by Shri Lobo, the learned Counsel for the respondent that the respondent was working as Cabin Crew with an Airline and was required to leave her job on account of insistence by the petitioner. It is submitted that the respondent is required to stay with her old aged mother in South Africa and looking to the expenses required, and further having regard to the fact that the husband is required to provide maintenance, so that the wife can have a comparable standard of living, the quantum of maintenance granted is legal and proper. It is submitted that the learned Sessions Judge has rightly directed the petitioner to provide, residential accommodation at Mapusa, as the respondent is required to come to India and as she is having no

other relatives here, to fall back upon. It is submitted that the orders passed, do not exercise any material irregularity, in which no interference is called for.

7. I have considered the rival circumstances and the submissions made. It is not in dispute that the respondent is presently staying in South Africa alongwith her old aged mother. Apart from the proceedings under the Domestic Violence Act, the respondent has also filed Matrimonial Petition No. 42/2013 for dissolution of marriage, which is pending before the competent Court in Goa. It is further not in dispute that, in that proceedings, there is an order operating, by which the petitioner has been restrained from alienating the properties. It is submitted on behalf of the respondent that the said order is passed on the basis of a statement made on behalf of the petitioner. The fact remains that there is an order, restraining the petitioner from alienating the properties.

8. A perusal of the impugned order passed by the learned Magistrate (para 12) shows that after considering the entries in the

Savings Account of the respondent with IDBI Bank, it is concluded that the petitioner was paying these amounts to the respondent towards maintenance. The learned Magistrate has found that the last of such payment has been made in October, 2013. The learned Magistrate has also noticed that the amounts so paid was not fixed, as the petitioner not being a salaried person and being a businessman was not having fixed income. The learned Magistrate has drawn an average figure of Rs.38,000/- after considering various entries and held that same can be granted, by way of interim maintenance. Insofar as litigation expenses are concerned, in paragraph 16 it is only said that the petitioner is directed to provide Rs.6,000/- per month from 21.03.2014. The learned Sessions Judge has confirmed this part of the finding.

9. It is argued on behalf of the petitioner that there is nothing at this stage to show that the amounts which are found to be credited in the Saving Bank Account of the respondent, (which the Courts below have referred) were deposited/paid by way of maintenance. Be that as it may, I find that the proceedings before the Magistrate are at the stage of evidence and thus, pending

disposal of the said case, some reasonable amount towards interim maintenance can be granted. It is only after the parties lead oral and documentary evidence, that the learned Magistrate would be in a position to come to a definite conclusion as to the quantum of maintenance/ litigation expenses, to be granted and the need for alternate accommodation. Considering the overall circumstances, I find that it would be appropriate to direct the petitioner herein, to pay maintenance at the rate of Rs.25,000/- per month alongwith litigation expenses at the rate of Rs.6,000/- per month, during pendency of the case. Insofar as the order directing the petitioner to provide residential accommodation at Mapusa is concerned, I find that once, the learned Sessions Judge has found that the respondent has never stayed in the shared household i.e. flat at Akar Heights and would be occasionally coming to India and temporarily occupying such residence, I find that the said part of the order can be set aside, at this stage.

10. In the result, the following order is passed:-

- (a) The impugned order as regards grant of interim maintenance is hereby modified.

(b) The petitioner shall pay interim maintenance at the rate of Rs.25,000/- per month and litigation expenses at the rate of Rs.6,000/- per month from 21.03.2014, to the respondent.

(c) The arrears of the interim maintenance/ litigation expenses, upto 31.08.2015 shall be paid in two equal monthly installments. The first of such installment shall be paid/deposited on or before 31.08.2015 and the second and final installment shall be paid/deposited on or before 30.09.2015, before the Judicial Magistrate First Class, Mapusa.

(d) The petitioner shall regularly pay the monthly interim maintenance/litigation expenses from 01.09.2015, to the respondent, before 5th of each English calendar month, before the Judicial Magistrate First Class, Mapusa.

(e) The order directing the petitioner to provide residential accommodation at Mapusa, is hereby set aside.

(f) The rest of the impugned order stands confirmed, subject to the aforesaid modifications.

(g) The rival contentions of the parties are kept open to be agitated before the learned Magistrate.

(h) Rule is partly made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.