

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL REVISION APPLICATION NO.305 OF 2014**

Rajkumar Ramnath Mourya
versus
The State of Maharashtra
and another

..Applicant.

..Respondents.

.....

Mr. Prashant Aher for the Applicant.
Smt. V.R. Bhosale, Addl. P.P. for the State.
Mr. Shreeram Shirsat for Respondent No.2.

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CORAM : A.S. GADKARI, J.

22nd June, 2015.

P.C. :

The present Revision Application is preferred by the original Respondent, husband the Applicant herein against the judgment and order dated 19th July, 2014 passed by the Additional Sessions Judge, Greater Mumbai in Criminal Appeal No.797 of 2012 thereby partly allowing the same, by reducing the monthly interim maintenance granted by the learned Metropolitan Magistrate, 44th Court, Andheri, Mumbai by its order dated 7th December, 2012. The learned Trial Court by the said order dated 7th December, 2012 had granted an amount of Rs.15,000/- per month to the Applicant - Respondent No.2 herein by way of interim maintenance from 2nd December, 2011 till the decision of the main application filed under Section 23 of the Protection of Women from the Domestic Violence Act. The Appellate Court in Criminal Appeal No.797 of 2012 reduced the said amount to

Rs.5,000/- per month to be granted to the Respondent No.2 herein by way of interim maintenance from the date of order passed by the learned Magistrate i.e. 7th December, 2012.

2. Heard the learned counsel appearing for the respective parties at length and also perused the entire record made available before me by the respective counsel.

3. The learned counsel for the Petitioner submits that once the Appellate Court comes to the conclusion that the amount awarded by the Trial Court is excessive, it ought to have been awarded the said amount from the date of passing of the order by the Appellate Court i.e. from 19th July, 2014 and not from the date of passing of the order by the Trial Court i.e. from 7th December, 2012. He further contended that even the amount of Rs.5,000/- awarded as and by way of interim maintenance to the Respondent No.2 wife, is an excessive amount and the same is not in consonance with the income of the Applicant herein. The learned counsel for the Respondent No.2 per contra supported the impugned orders and submitted that the present Revision Application may be dismissed.

4. The learned Trial Court i.e. the learned Metropolitan Magistrate, 44th Court, Andheri, Mumbai in an application filed by the Respondent No.2 under the provisions of Section 23 of the Protection of Women

from the Domestic Violence Act by the aforesaid order, dated 7th December, 2012, was pleased to grant Rs.15,000/- per month as an interim maintenance to the Respondent No.2 wife from 2nd December, 2011 till the decision of the main application. The learned Trial Court while recording its finding has observed that the Applicant herein has denied the marriage with the Respondent No.2 itself during the proceedings. However, the documents on record produced before the said Court, in unequivocal terms disclose the marriage between the Applicant and the Respondent No.2 herein. The learned Trial Court also observed that it is the legal duty of the Applicant herein to maintain his wife, but the Applicant has failed to perform his legal duty and rather has taken a very adamant view for no reasons. It was the pleading of the Respondent No.2 before the Trial Court that the Applicant herein is doing the business of computers and having a shop in the name and style as 'Impact Computer' at Sakinaka and earning Rs.60,000/- per month. The Respondent No.2 further claimed that the other family members also have their independent business at Juhu, Mumbai and are earning substantial amount for themselves out of the said business. The learned Trial Court though observed that, there is no document to show the exact income of the Applicant herein, however, after considering the present price of daily commodities and hike in the price was pleased to pass an order thereby granting Rs.15,000/- per month as interim maintenance to the Respondent No.2 wife.

5. In an appeal preferred by the Applicant herein, the learned Additional Sessions Judge, in Criminal Appeal No.797 of 2012 by the impugned order dated 19th July, 2014 reduced the said interim maintenance to Rs.5,000/- per month to be paid from the date of order passed by the Trial Court i.e. 7th December, 2012.

6. While coming to the conclusion that the Applicant herein is liable to pay only an amount of Rs.5,000/- per month to the Respondent No.2 the Appellate Court has observed that the order passed by the learned Trial Court did not show that any documentary proof or material was placed by the Respondent No.2 to show the income of the Applicant herein. Though a claim was made that the Applicant is a computer expert and earning from the said business, no documentary proof was placed before the Magistrate. The Appellate Court, therefore, in the absence of material evidence on income and financial status of the Applicant herein held that the learned Trial Court had committed an error in granting the said claim to the Respondent No.2 wife. The Appellate Court also observed that prima facie it is proved that the Respondent No.2 herein is the wife of the Applicant. The Appellate Court further observed that the Applicant has performed second marriage with one Smt. Sujata Gaikwad. In the circumstances, the Appellate Court held that the Respondent No.2 herein is entitled for maintenance and awarded an amount of Rs.5,000/- per month as and

by way of interim maintenance from 7th December, 2012 i.e. the date of order passed by the Trial Court. The Appellate Court also came to the conclusion that the amount of Rs.15,000/- per month granted by the Trial Court is far excessive and needs to be reduced to Rs.5,000/- per month. The Appellate Court on the basis of the said finding passed the impugned order dated 19th July, 2014.

7. I have perused the entire record made available to me in the present Application. It appears to me that though the Respondent No.2 wife made an exaggerated claim at the inception of the proceedings initiated under the provisions of the Protection of Women from the Domestic Violence Act, the same was not supported by any documentary evidence and I find that the conclusion recorded by the Appellate Court is just, right and proper. It also appears to me that the Appellate Court has come to the correct and right conclusion that the amount of Rs.5,000/- is to be paid to the Respondent No.2 wife as interim maintenance which according to me is commensurate with the lifestyle and income of the Applicant herein. Though the Respondent No.2 has not placed on record any documentary evidence in support of her claim, the finding recorded by the Appellate Court that the Applicant herein has performed a second marriage with Smt. Sujata Gaikwad speaks volume. The Applicant has not denied the said fact in the present proceedings. Taking into consideration the said fact and other related aspects such as the Applicant is self sufficient to

maintain himself adequately by conducting his own business and that the Applicant though has denied his relationship with the Respondent No.2 as his wife, the documentary evidence on record has prima facie proved that the Respondent No.2 is his legally wedded wife, I am of the considered opinion that the Appellate Court has rightly granted the interim maintenance at the rate of Rs.5,000/- per month to the Respondent No.2 which is commensurate with the status and lifestyle of the Applicant herein as stated earlier. It is further to be noted here that the Respondent No.2 herein has produced documents about payment of amount to the family members of the Applicant and gifting a motorcycle at the time of performance of the marriage. The Applicant has nowhere denied that he is unable to maintain the said vehicle and the lifestyle of the Applicant as pleaded by the Respondent No.2 in her application filed before the Trial Court.

8. After taking into consideration the entire material available on record, in my considered opinion, the order passed by the Appellate Court in Criminal Appeal No.797 of 2012 dated 19th July, 2014 does not suffer from any infirmity either on facts or in law and therefore, the present Revision Application fails and is dismissed accordingly.

(A.S. Gadkari, J.)