

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4275 OF 2014

Deepak Santosh More .. Petitioner
-Versus-
Deepali Deepak More & Ors. .. Respondents

Mr.Niranjan Mogre for petitioner
Mr.S.D.Patil for respondent No.1
Mrs.P.P.Bhosale, APP for State.

CORAM : M.L.TAHILIYANI, J.

DATE : 7th January 2015.

P.C.

1] Heard learned Counsel for petitioner and respondent No.1. Heard Mrs.Bhosale, learned APP for State.

2] The petitioner is aggrieved by the judgement and order passed by the Additional Sessions Judge, Pune in Criminal Appeal Nos. 516 of 2013 and Criminal Appeal No.526 of 2013.

3] This is a dispute between husband and wife. The husband was appellant in Criminal Appeal No.516 of 2016 and wife was the appellant in Criminal Appeal No.526 of 2013.

4] The wife respondent No.1 had filed an application before the Magistrate under the Protection of Women from Domestic Violence Act. During the pendency of the said application, the Magistrate has passed an interim order directing the petitioner to pay Rs.40,000/- per month to the respondent No.1 as a monetary relief from the date of application. Both, husband and wife felt aggrieved by the order of the learned Magistrate. Hence both of them filed appeals before the Sessions Court. During the course of hearing of both the appeals, the learned sessions Judge modified the order passed by the learned Magistrate.

5] The order of the Sessions Judge reads as under:-

“(1) Cri.Appeal No.516 of 2013 is hereby dismissed with costs;

(2) Cri.Appeal No.526 of 2013 is hereby partly allowed with proportionate costs;

(3) The interim maintenance order dated 21.09.2013 is hereby modified as under:-

(a) The interim maintenance order of paying Rs.40,000/- p.m. for the applicant No.1 and 2 from the date of the application passed by the learned J.M.F.C. Court on 21.09.2013 is hereby confirmed;

(b) The appellant husband is directed to contribute Rs.18,000/- p.m. towards E.M.I. Of S.B.I. Bank and the balance amount of E.M.I. Shall be borne by the respondent wife.

(4) Copy of the Judgement and order be kept in Criminal Appeal No.526 of 2013.”

6] It is seen that the monetary relief of Rs.40,000/- was maintained by the learned Sessions Judge. The petitioner was in addition to the said amount amount of Rs.40,000/- was directed to pay Rs.18,000/- per month by way of part payment of EMI to repay the loan taken by the petitioner and respondent from State Bank of India. It may be noted here that the loan is taken by both the petitioner and respondent No.1 jointly. It may also be noted here that the respondent No.1 is also earning Rs.17,000/- per month. The learned Advocate for the petitioner has submitted that the petitioner is earning about Rs.1 lakh per month and his out goings are about Rs.70,000/-. In these circumstances, it is difficult for him to pay Rs.58,000/- pursuant to the order passed by the sessions court.

7] Before I proceed further, it may be noted that when the interim order was passed, obviously the evidence of the parties with cross examination was not before the trial court. The purpose of interim

order is to give temporary relief to the aggrieved person for subsistence. The interim order cannot decide all the issues as if the same are decided finally. In view thereof, I am of the opinion that the order passed by the sessions court needs to be modified, particularly when the respondent No.1 is earning Rs.17,000/- per month.

8] The order of learned Magistrate is modified as under:-

(a) Interim maintainance to be paid by the petitioner to respondent No.1 shall be Rs.25,000/- per month. As far as the order with regard to payment of E.M.I. Is concerned, the same is maintained;

(b) It is further ordered that the arrears shall be paid by the petitioner within a period of 30 days from today. In default, it is always open for the respondent No.1 to apply for execution of the order before the trial Magistrate.

(M.L.TAHILIYANI, J.)