

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1337 OF 2016

Rashmi Saroop Doultani  
Nee Sonal Inderlal Kukreja. ... Petitioner.  
Versus  
Saroop Sunderdas Doultani & ors. ... Respondents.

WITH

CRIMINAL WRIT PETITION NO. 2286 OF 2016

Saroop Sunderdas Doultani. ... Petitioner.  
Versus  
Rashmi Saroop Doultani  
Nee Sonal Inderlal Kukreja & anr. ... Respondents.

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Mr. M.H. Ramsinghani a/w. Mr. D.M. Galani, advocate for petitioner.

Mr. S.A. Malkani, advocate for respondent.

Mr. A.R. Patil, APP for State.

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**CORAM : RAVINDRA V.GHUGE, J**  
**DATE : JULY 12, 2016**

**P.C.:**

1 Rule. Rule made returnable forthwith and both the petitions are heard finally with the consent of the parties.

2 The Petitioner in the first petition is the wife and the respondents are the husband and his relatives, who live as a joint family. The second petition has been filed by the husband.

3 In both these matters, the litigating sides are aggrieved by the orders dated 27/10/2015 passed by the learned Judicial Magistrate First Class, Ulhasnagar and the Judgment and Order dated 2<sup>nd</sup> March, 2016 delivered by the learned Additional Sessions Judge in the two criminal appeals filed by the husband and the wife respectively.

4 By the order of the learned Magistrate dated 27<sup>th</sup> October, 2015, the husband is directed to pay interim maintenance of Rs. 8,000/- per month from the date of the application, which is 17<sup>th</sup> October, 2015,

and is further directed to pay rent to the wife at rate of Rs. 6000/- per month from the date of the order. The learned Additional Sessions Judge has, while dismissing the Criminal Appeal filed by the wife bearing No. 37 of 2015, allowed the Criminal Appeal No. 35 of 2015 filed by the husband and directed the payment of interim maintenance of Rs. 5,000/- per month and the rent allowance at the rate of Rs. 3,000/- per month from the date of the application.

5 It is not in dispute that the husband as well as the wife are before this Court as against the interlocutory order passed by the learned Magistrate dated 27<sup>th</sup> October, 2015 and the main proceeding under Section 12 of the Protection of Women from Domestic Violence Act, 2005 is still pending adjudication.

6 The learned advocates for the respective sides have canvassed a host of factors. Considering the order that I intend to pass, I am not required to advert to their entire submissions, keeping in view that

the main application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 is pending adjudication before the learned Magistrate.

7 Considering submissions of the learned advocates and the record available, it appears as follows : -

- (a) The wife is presently living with her parents in their accommodation.
- (b) The husband is said to be working in a mobile shop, claimed to have been owned by his father.
- (c) The husband owns a car and two motor cycles.
- (d) The husband lives in an apartment which is a 3 BHK flat.
- (e) The wife is presently pursuing her third year in the LLB Course.
- (f) The husband claims to be employed by his father at a meager salary of Rs. 5,000/- per month.
- (g) The husband and his family have no intention of disposing of the apartment, in which they are presently residing.

8 The learned Magistrate has granted an amount of Rs. 8,000/- per month, as interim maintenance allowance to the wife, considering the business conducted by the husband. Ex-facie, I am unable to believe the statement of the husband that he is an employee of his father, and is earning Rs. 5,000/- from the said shop. The husband appears to be conducting the said shop. It is equally unbelievable that he earns such a meager amount per month. The fact that the husband and his family were earlier residing in a two BHK apartment and after marriage, they have shifted to a 3 BHK apartment, indicates that the husband is attempting to suppress his monthly income. These factors have been considered by the learned Magistrate.

9 Considering the above, I do not find any justifiable reason for the learned Sessions Court to reduce the interim maintenance of Rs. 8,000/- per month. The husband and his father, who are capable of maintaining a 3 BHK apartment in Ulhasnagar, render the contention

of the husband that he is earning a meager amount, unbelievable. I find from the Judgment of the Learned Additional Sessions Court that no reason has been set out to reduce the maintenance from Rs. 8,000/- to Rs. 5,000/-. In this fact situation, I deem it appropriate to set aside the conclusion of the learned Additional Sessions Judge to the extent of reducing of the interim maintenance, as was granted by the learned Magistrate.

10 In so far as the payment of rent for an alternate accommodation is concerned, I find that both the learned Courts below have failed to note that the wife is not living in a rented premises and is presently residing with her parents in their own apartment. When the wife is not required to pay rent on monthly basis for any accommodation, neither the learned Magistrate nor the learned Additional Sessions Judge could have proceeded to grant rent to the wife.

11 Learned advocate appearing on behalf of the wife has made a serious grievance that the husband is in arrears, and despite the order of payment of interim maintenance with effect from 17/10/2014, has paid an amount of Rs. 10,000/- only.

12 Needless to state, the wife has legal remedies to seek execution of an order granting interim maintenance to her. In order to resolve this issue, I have called upon the learned advocate for the husband to make a statement, as to whether he is willing to deposit an amount of Rs. 1,00,000/- within a period of four weeks, considering that the arrears would be more than Rs. 1,00,000/-. The learned advocate has submitted on instructions that he would not be able to pay that amount.

13 Considering the above, the first petition (WP No. 1337/2016) filed by the wife is partly allowed by setting aside the direction of the learned Additional Sessions Judge, Kalyan, as regards payment of

interim maintenance of Rs. 5,000/-. Consequentially, the order of the learned Magistrate to the extent of the direction to pay interim maintenance of Rs. 8,000/- per month from the date of the application till the final disposal of the main proceedings, is sustained and hence, restored. The first petition (WP No. 1337/2016) is partly rejected to the extent of the claim for rent.

14 The second petition (WP No. 2286/2016), which is filed by the husband, is partly allowed only to the extent of quashing and setting aside the order of the learned Additional Sessions Judge as well as the learned Magistrate, granting rent to the wife, who is not occupying rental premises.

15 Needless to state, in so far as the main proceedings before the learned Magistrate are concerned, all the contentions of the litigating sides are kept open, so as to enable the learned Magistrate to decide the said proceedings on its own merits.

16 In the event, the wife occupies rental premises in future, the request for rent may be considered by the learned Magistrate on its own merits.

17 Rule is made partly absolute in both the petitions in the above terms.

**(RAVINDRA V.GHUGE, J)**