

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2848 OF 2015**

Dr. Amit Pradip Wadke

..Petitioner

Vs.

**Mrs. (Dr) Shahnaz Shrikant Tendulkar
@ Shahnaz Amit Wadke**

..Respondent

**Mr. Mr. R. M. Haridas for the Petitioner
Mr. Nitin Gangal for the Respondent**

**CORAM : R. M. SAVANT, J.
DATE : 15th APRIL, 2016**

P.C.

1 The above Criminal Writ Petition challenges the order dated 25-6-2015 passed by the Learned Ad-hoc Sessions Judge, City Civil and Sessions Court, Borivali, Division Dindoshi, by which order, the Criminal Appeal No.9 of 2014 filed by the Petitioner herein against the order dated 11-12-2013 directing the Petitioner to pay a sum of Rs.10,000/- as interim monetary compensation came to be disposed of and resultantly the order dated 11-12-2013 passed by the Additional Chief Metropolitan Magistrate, 24th Court, Borivali, Mumbai, granting Rs.10,000/- towards interim monetary relief to the Respondent-wife came to be confirmed.

2 The marriage between the Petitioner and the Respondent took place on 12-5-2005 and they have a son Aaron born out of the said wedlock. The parties were residing in the United States of America after the marriage. It seems that since the year 2011 they are estranged. The Respondent-wife filed a Petition for divorce being Petition No.A-300/12 in the Family Court seeking divorce under Section 13(1)(i-a) of the Hindu Marriage Act. The said marriage Petition is pending before the Family Court at Mumbai. It seems that the Respondent herein filed an application for maintenance in the Family Court. It seems that contemporaneously the Respondent had also filed an application for interim monetary compensation under the Domestic Violence Act. The application for maintenance filed by the Respondent before the Family court was rejected by the Learned Judge of the Family Court by order dated 16-2-2013, to the extent that the maintenance to the Respondent was refused but Rs.10,000/- granted as maintenance to the son Aaron for the reasons mentioned in the said order. Amongst the said reasons was the reason that the Respondent had already filed an application under the Domestic Violence Act seeking interim monetary compensation. The order dated 16-2-2013 passed by the Family Court is a subject matter of a separate Writ Petition filed by the Respondent-wife being Writ Petition No.2371 of 2016 which is also listed today.

3 Be that as it may, the application for interim monetary

compensation filed by the Respondent was opposed to on behalf of the Petitioner and the opposition was principally on the ground that the Respondent was highly qualified and therefore can provide for herself. It was also the case of the Petitioner that the Respondent is earning Rs.1 lac per month. The Additional Chief Metropolitan Magistrate considered the said application filed by the Respondent and by his order dated 11-12-2013 has allowed the said application and directed the Petitioner herein to pay monetary compensation of Rs.10,000/- per month to the Respondent. The gist of the reasoning of the Learned Judge was that the case of the Petitioner that he is pursuing studies in the USA and was unemployed, cannot be accepted and the case of the Respondent herein that the Petitioner was working as a Clinical Research Coordinator in the Rogosin Institute wherein he is paid USD 4000 per month, was required to be accepted. The Learned Additional Chief Metropolitan Magistrate also observed that the Petitioner herein has not been able to prove that the Respondent was earning Rs.1 lac per month. As indicated above, the Learned Additional Chief Metropolitan Magistrate was pleased to allow the application by directing the Petitioner to pay a sum of Rs.10,000/- per month as interim monetary compensation under the said Act.

4 The Petitioner aggrieved by the said order dated 11-12-2013 carried the matter to the Sessions Court by way of Criminal Appeal No.9 of 2014. The Learned Adhoc Sessions Judge having regard to the factual position

which had come on record did not deem it appropriate to interfere with the order passed by the Learned Additional Chief Metropolitan Magistrate and accordingly dismissed the Appeal.

5 The Learned Counsel for the Petitioner Mr. Haridas sought to contend that the Respondent being highly qualified being a post graduate in dental surgery and also having specialization in the super specialty i.e. Pediatric Dentistry can provide for herself and therefore the Learned Chief Metropolitan Magistrate as well as the Sessions Court had erred in granting the interim monetary compensation and confirmed the same. The Learned Counsel sought to place reliance on the Judgment of the Apex Court in the matter of **Bhushan Kumar Meen Vs. Mansi Meen alias Harpreet Kaur** ¹ in support of the said contention.

6 In my view, it is not possible to accept the said contention of the Learned Counsel for the Petitioner. As indicated above, it is in the facts and circumstances of the present case that the Learned Additional Chief Metropolitan Magistrate has granted interim monetary compensation @ Rs.10,000/- which has been confirmed by the Appellate Court. It is required to be borne in mind that it is not the case of the Petitioner that the Respondent is gainfully employed. In fact the Petitioner was not able to substantiate his case that the Respondent is earning Rs.1 lac per month. In my view, the judgment

¹ (2010) 15 Supreme Court Cases 372

in Bhushan Kumar Meen's case (supra) has no application as the said judgment was rendered in the facts of the said case. In the said case the interim maintenance was modified from Rs.10,000/- to Rs.5000/-

7 Having regard to the mandate of the Domestic Violence Act, in my view, no interference is called for with the impugned order. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]