

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO.82 OF 2015

1. Smt. Sushma Karapurkar,
wife of Vasudev Karapurkar,
Major of age about 59 yrs,
R/o.H.no.46, Karaswada,
Mapusa, Bardez, Goa.
2. Shri Raya Karapurkar,
Major of age,
Son of Vasudev Karapurkar
R/o. H.no.46, Karaswada,
Mapusa, Bardez, Goa. .. Applicants

Versus

Ms. Vinita U. Gawde,
D/o. Uttam S. Gawde,
Major of age about 24 yrs,
R/o. H.no.209, Near Power
Grid Corporation of India
Ltd., Chicalim Colvale,
Bardez, Goa. .. Respondent

Mr. A. V. Pavitran, Advocate under Legal Aid Scheme for the applicants.

Ms. C. Collosso and Ms. D. Tulkar, Advocates for the respondent.

Coram :- C. V. BHADANG, J.

Date :- 22nd February, 2017

ORAL ORDER :

On 28/03/2016, a notice for final disposal was issued in this case. I have heard the learned Counsel for the parties and the

Criminal Revision Application is being disposed of finally.

2. The applicants are challenging the judgment and order dated 29/10/2015, passed by the learned Sessions Judge in Criminal Appeal No.102/2013. By the impugned judgment, the learned Sessions Judge, while partly allowing the appeal, has confirmed the interim order passed by the learned Judicial Magistrate, First Class, granting custody of the minor child to the respondent along with maintenance of Rs.5,000/- to the respondent and Rs.3,000/- per month to the minor child along with some other reliefs.

3. The brief facts, necessary for the disposal of the application, may be stated thus :

That the respondent approached the learned Magistrate with an application under the provisions of Protection of Women from Domestic Violence Act, 2005 (the Act, for short), seeking following reliefs :

- (i) For an order of custody under Section 21 of her daughter Vedhali Karapurkar
- (ii) For an order of protection under Section 18(c), (d), retraining the applicant no.2 from in any way, coming to her work place.

(iii) For an order under Section 20, claiming maintenance of Rs.15,000/- for herself and her minor daughter.

(iv) For an interim maintenance in the sum of Rs.10,000/- per month.

(v) For compensation of Rs.50,000/- under Section 22 of the Act.

(vi) For return of Stridhan under Section 19(8) of the Act, and lastly

(vii) For alternate residence to be provided to her and her daughter as provided under Section 19(f) of the Act. In the alternative, to pay rental amount at the rate of 2,000/- per month.

4. The applicants resisted the application claiming that the respondent was a minor at the time when the marriage was solemnised. It is submitted that thus, she was not of the legal age to marry and parties were not holding out themselves as husband and wife. It was, thus, denied that respondent would be entitled to claim maintenance. At this stage, it is necessary to mention that the paternity of the minor girl child, who is presently aged 7 years, is not in dispute. Applicant no.2, who is working as Lower Division Clerk (LDC) in the Town and Planning Department, was under

suspension from February, 2012 to March, 2016 and at the relevant time, applicant no.2 was getting subsistence allowance of Rs.4,500/- per month. It was also contended that the respondent is engaged with a private firm and was earning Rs.9,000/- and is, thus, able to maintain herself and the child.

5. The learned Magistrate, by an order dated 28/01/2013, partly allowed the application for interim reliefs, holding that the respondent is entitled for the custody of the child, who was then aged 2 years. The applicants were restrained from visiting the work place or communicate with the respondent in whatsoever manner. The learned Magistrate granted total maintenance of Rs.8,000/- (Rs.5,000/- to the respondent and Rs.3,000/- to the child) and directing return of the Stridhan.

6. Feeling aggrieved, applicant no.2 challenged the same before the learned Sessions Judge in Criminal Appeal No.102/2013. The learned Sessions Judge framed the following three points :

“1. Whether the trial court erred in passing the order that the complainant is entitled to the custody of her minor child?

2. Whether the trial court erred in ordering the appellant herein to pay a sum of Rs.5,000/- to the

complainant and Rs.3,000/- towards the child per month?

3. Whether the trial court erred in directing the appellant to return to the respondent her stridhan as per the list of the complainant?"

7. The learned Sessions Judge answered point nos.1 and 2 in the negative and point no.3 in the affirmative and in that view of the matter, has partly allowed the appeal as aforesaid. Hence, this revision.

8. I have heard Shri Pavitran, the learned Counsel for the applicants and the learned Counsel for the respondent. On behalf of the applicants, written submissions are filed, which are taken on record. With the assistance of the learned Counsel for the parties, I have gone through the impugned orders passed.

9. On behalf of the applicants, several contentions are raised. It is contended that the respondent was minor on the date of the marriage and as such, in view of the decision of the Hon'ble Supreme Court in the case of **D. Velu Swami Vs. D. Patchaiammal**; (2010)10 SCC 469, the complaint under the Act would not be maintainable. It is submitted that the four parameters as set out by the Hon'ble Supreme Court are not

satisfied in this case. It is also contended that the respondent has a remedy under the Prohibition of Child Marriage Act, 2006 and in view of the said remedy, the complaint is not maintainable.

10. In so far as merits are concerned, it is contended that applicant no.2 was under suspension for the period from February, 2012 to March, 2016 and was getting only Rs.4,500/- as subsistence allowance and thus, was not in a position to pay maintenance at the rate of Rs.8,000/-. It is submitted that although applicant no.2 is presently reinstated in service, his carry home salary is Rs.15,995/-. It is submitted that there are certain deductions towards the loan and applicant no.1, who is the mother of applicant no.2 and his sister, are dependent on him. It is also submitted that the respondent is having illicit relations and as such, she is not entitled to any maintenance.

11. In reply, the learned Counsel for the respondent submits that the parties were all along staying and holding out as husband and wife. It is pointed out that applicant no.2 is not disputing the paternity of his daughter. It is submitted that the matter is only at the stage of interim relief. The main application filed is still pending. The learned Counsel points out that right from the year 2013, applicant no.2 has not deposited any amount

towards, maintenance granted.

12. I have carefully considered the rival circumstances and the submissions made.

13. An attempt was made to see whether the parties can reach consensus on the amount of interim maintenance, which applicant no.2 can pay, so that the application before the learned Magistrate can be decided on merits. In the written submissions, applicant no.2 has expressed willingness to pay maintenance of the child at the rate of Rs.3,000/- per month and has also shown willingness to shoulder her educational expenses. Applicant no.2 has proposed that he will approach the School Authorities, where the child is studying and will directly bear the expenses and shall pay the school/ tuition fees till the child reaches 10th standard. He has also expressed willingness to increase the child support of Rs.3,000/- by Rs.1,000/- every year.

14. As noticed earlier, the main application before the Magistrate is still pending. The allegations and counter allegations made by the parties, will have to be enquired into by the learned Magistrate at the trial. The learned Counsel for the parties had mainly confined their arguments on the aspect of the

order, granting interim maintenance. It is undisputed that from February, 2012 to March, 2016, applicant no.2 was under suspension. Although he has claimed that he was getting subsistence allowance of Rs.4,500/- per month, normally, under the relevant rules, the subsistence allowance is gradually increased. However, there is no clear evidence as to how much and to what extent the subsistence allowance was increased, so as to record any finding on that aspect. Presently, applicant no.2 has been reinstated. Applicant no.2 has not produced his salary slip or salary certificate, in order to ascertain the gross salary earned. Applicant no.2 has produced only the bank account in the present revision application to claim that he is getting Rs.15,995/- as the net carry home salary. Considering the overall circumstances and the fact that applicant no.2 has expressed willingness to bear the maintenance of Rs.3,000/- per month and has also shown willingness to increase the child support by Rs.1,000/- per year. The maintenance @ Rs.3,000/- p.m. to the child was granted in the year 2013. I find that the applicant no.2 can be ordered to pay Rs.5,000/- per month as maintenance of the minor daughter.

15. Before parting with final order, it is necessary to state that it would be appropriate that the learned Magistrate decides the complaint as expeditiously as possible and in a time bound

manner. In the result, the following order is passed :

- (i) The Criminal Revision Application is partly allowed.
- (ii) The impugned order is modified, directing applicant no.2 to pay maintenance at the rate of Rs.5,000/- per month only in respect of the minor daughter, to the respondent, which amount shall be payable from the date of the application.
- (iii) The arrears of maintenance from the date of application till 28/02/2017, shall be paid / deposited before the learned Magistrate in four equal monthly instalments, starting from March, 2017.
- (iv) Applicant no.2 shall pay/ deposit the monthly maintenance of Rs.5,000/- from 01/03/2017 onwards on or before 5th day of each calendar month.
- (v) The learned Magistrate to decide the complaint as expeditiously as possible. Parties to co-operate for early disposal of the complaint.
- (vi) Revision Application is disposed of in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

SMA