

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.48 OF 2015**

Avinash Bhimrao Ghodke : Appellant.
Versus
Mrs. Surekha Avinash Ghodke and anr. : Respondents.

Mrs. Racheeta R Dhuru for the Appellant.
Mr. S P Shetye for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 10th February 2017

P.C.

1 The revisionary jurisdiction of this Court is invoked against the order dated 06/01/2015 passed by the learned District Judge-3 and Additional Sessions Judge, Thane by which order Criminal Appeal No.79 of 2014 filed by the Petitioner herein came to be dismissed and resultantly the order dated 21/05/2014 passed by the learned 2nd JMFC, CBD, Belapur Vashi, Navi Mumbai in M.A.No.142 of 2013 came to be confirmed.

2 It is not necessary to burden this order with unnecessary details, suffice it would be to state that the Respondent wife herein has filed proceedings under the Protection of Woman for Domestic Violence Act for claiming residence and maintenance. The said proceedings are filed under Section 12 of the said Act. The said application is founded on the alleged ill-treatment meted out to the Respondent herein in her matrimonial house where she went to reside after her marriage. It is for the said reason that according to

the Respondent she left the matrimonial house on 18/12/2011. Out of the said wedlock a child by name Tanishq was born on 08/03/2012 and is therefore about 4 years as on date. In the said application the Respondent here filed an interim application claiming interim maintenance and claiming residence or payment in lieu thereof. It was the case of the Respondent that the Petitioner is an advocate and his income is in the region of Rs.50,000/- to Rs.60,000/- per month. It is on the said basis that the Respondent claimed maintenance of Rs.15,000/- for herself and Rs.10,000/- for the child and residence from the Petitioner.

3 The said application filed by the Respondent was opposed to by the Petitioner by filing a reply. It was the case of the Petitioner that the Respondent is gainfully employed. It was the case of the Petitioner that the Respondent has left the matrimonial house of her own accord. The Petitioner therefore prayed for dismissal of the said Misc. Application No.142 of 2013 filed by the Respondent.

4 The Trial Court i.e. the learned JMFC, Vashi considered the said application and has by his order dated 21/05/2014 partly allowed the said application by directing the Petitioner herein who was the Respondent No.1 in the said application to pay maintenance of Rs.5000/- per month to the wife, Rs.4000/- per month to the child and to provide residence or in lieu thereof to

pay Rs.3000/- per month. The gist of the reasoning of the learned JMFC was that though the income tax returns of the Petitioner here disclose that his income was Rs.1,10,000/-, the learned JMFC has observed that an advocate who submits his returns can be said to have an income in the region of Rs.25,000/- per month. Hence the learned JMFC presumed that the income of the Petitioner herein is in the region of Rs.25,000/- per month.

5 The Petitioner aggrieved by the said order dated 21/05/2014 challenged the said by invoking the Appellate Jurisdiction by filing an Appeal. The said Appeal was numbered as Criminal Appeal No.79 of 2014. The learned District Judge-3 and Additional Sessions Judge, Thane has by the impugned order dated 06/01/2015 dismissed the said Appeal filed by the Petitioner herein and thereby has confirmed the order dated 21/05/2014 passed by the learned JMFC, Vashi. The learned Additional Sessions Judge adverted to the case of the Petitioner viz. that since the Respondent was earning, she would not be entitled to maintenance from the Petitioner. The learned Additional Sessions Judge observed that notwithstanding the fact that the Respondent might be earning, the obligation of the Petitioner to maintain her and right to the Respondent to claim maintenance cannot be taken away. The learned Additional Sessions Judge has also adverted to the factum of income of the Petitioner and on such consideration has come to a conclusion that the order dated 21/05/2014 passed by the learned JMFC, Vashi did not

call for any interference and accordingly dismissed the said Appeal by the impugned order dated 06/01/2015.

6 The learned counsel for the Petitioner Ms. Racheeta Dhuru would seek to reiterate the case of the Petitioner which was urged before the Courts below. The learned counsel would question the quantum of maintenance granted to the Respondent wife as well as to the child, as also the direction to provide residence and the amount of Rs.3000/- per month in lieu of residence. The learned counsel would contend that the income of the Petitioner is not such as to grant maintenance to the extent granted by the learned JMFC, Vashi by order dated 21/05/2014 which has been confirmed by the impugned order dated 06/01/2015.

7 Per contra, the learned counsel Shri S P Shetye appearing on behalf of the Respondent wife would support the impugned orders. The learned counsel would contend that the Petitioner is a practicing advocate and therefore the conclusion drawn by the Trial Court as confirmed by the Appellate Court was correct. It was the submission of the learned counsel for the Respondent that the maintenance granted by the Trial Court as confirmed by the Appellate Court needs no interference at the hands of this Court in its revisionary jurisdiction.

8 Having heard the learned counsel for the parties, I have considered the rival contentions. As indicated above, the maintenance granted to the Respondent wife is in the sum of Rs.5,000/-, to the child in the sum of Rs.4,000/- and Rs.3000/- have been granted if the Petitioner is not in a position to provide residence to the Respondent wife. In my view, considering today's cost of living, the amount granted by way of maintenance to the Respondent wife in the sum of Rs.5,000/- cannot be said to be excessive having regard to the material on record. In so far as the child is concerned, as indicated above, the child Tanishq is born on 08/03/2012 and is therefore about 4 years old as on date. The amount of Rs.4000/- per month granted towards the child, in my view, is a bit excessive considering the age of the child as the child is not yet school going. The learned counsel for the Respondent wife Shri Shetye stated that the child is undergoing some speech therapy. In my view, the maintenance granted to the child is required to be reduced by Rs.1,000/- per month. However the same would be from date i.e. 10/02/2017. In my view, having regard to the reasons on which the orders passed by the learned JMFC and the learned Additional Sessions Judge are founded, no case for exercise of the revisionary jurisdiction, except to the extent mentioned herein above is made out. The above Revision Application is accordingly disposed of. It is expected that the arrears till date would be cleared by the Appellant within four weeks from date.

[R.M.SAVANT, J]