

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.919 OF 2017

UMA ASHISH GHATE AND ANR.)...PETITIONERS

V/s.

ASHISH ANIL GHATE AND ANOTHER)...RESPONDENTS

Mr.Sanjay Bhojwani, Advocate for the Petitioners.

Mr.S.S.Kanetkar, Advocate for Respondent No.1.

Mrs.M.R.Tidke, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 29th SEPTEMBER 2017

P.C. :

1 By this petition, petitioners who are an aggrieved person and her minor son, are challenging the judgment and order dated 17th October 2016 passed by the learned Additional Sessions Judge, Pune, thereby partly allowing the appeal filed by the original respondent / husband under Section 29 of the Protection of Women from Domestic Violence Act, 2005, (D.V.Act hereinafter)

challenging the interim order passed by the learned trial Magistrate on 16th March 2016 in Criminal Miscellaneous Application No.903 of 2015 filed by the present petitioners.

2 Heard the learned advocate appearing for the petitioners. He vehemently argued that the learned trial Magistrate has awarded maintenance on the basis of material produced on record and therefore, in the light of law laid down by this court in the matter of Abhijit Bhikaseeth Auti vs. State of Maharashtra¹, the appellate court ought not to have interfered with the said discretionary order. The learned advocate drew my attention to the prayer clause of the Memo of Appeal filed by the original respondent and submitted that the order of interim maintenance was only challenged and the order pertaining to the rent or alternate accommodation was never challenged by the original respondent. Therefore, the appellate court ought not to have interfered with the order directing payment of rent at the rate of Rs.5,000/- per month by the respondent / husband to the aggrieved person and her minor son. The learned advocate

¹ (2009) 0 Cr.L.J. 889

further argued that the appellate court failed to consider the fact that interim maintenance of Rs.5,000/- granted by the learned Family court under Section 24 of the Hindu Marriage Act was for maintenance of the son and not that of the aggrieved person. The learned advocate further argued that documents regarding income, which were not part of the record of the trial court, were considered by the appellate court in interfering the order impugned before it, which was based on sound exercise of discretion by the learned trial Magistrate.

3 I have heard the learned advocate appearing for the respondent no.1 herein i.e. husband of the aggrieved person. He took me through pleadings of the parties and supported impugned orders.

4 I have carefully perused pleadings of parties as well as documents and the orders passed by the learned trial Magistrate as well as the judgment and order of the learned appellate court.

5 An application under Section 12 of the D.V.Act came to be filed by present petitioners before the learned JMFC, Pune. In the said application, interim relief was sought by present petitioners. Paragraph 120 of the said application deals with financial status and employment of aggrieved person which reads thus :

“120 The Applicant states that the Applicant is working however despite the same the Applicant No.1 is unable to make ends meet and provide for the basic needs of herself and the Applicant No.2. The Applicant No.1 is required to borrow money from her father to even pay for the School and education expenses of the Applicant No.2. The situation has caused further trauma to the Applicant No.1.”

Perusal of this paragraph shows that petitioner no.1 is working for earning livelihood but her income is not enough to meet her basic requirements.

6 Similarly, in paragraph 122 of the application, present petitioners had pleaded about income and occupation of the respondent / husband. Paragraph 122 reads thus :

“122 The Applicant No.1 states that it is the bounden duty of the Respondent No.1 to financially support the Applicants and to afford them the same life style that he himself is leading. The Respondent No.1 is not starved of resources in any manner. It is learnt that the Respondent No.1 is doing extremely well in his travel business run in the name and style of Swades Holidays. The Respondent No.1 is leading a lavish life style and spending lavishly on his extra marital affairs.”

Perusal of this paragraph goes to show that income of the respondent / husband was not quantified by the aggrieved person / wife. It is only pleaded that he is doing extremely well in his travel business and is leading lavish life style.

7 It is, thus, clear from pleadings by petitioners before the learned trial court that neither income of the aggrieved person / wife was quantified nor income of the respondent / husband is quantified or estimated. In the light of this backdrop, the learned trial Magistrate was pleased to award maintenance of Rs.30,000/- per month to both petitioners before it, which is inclusive even of educational expenses of petitioner no.2 / minor son. In addition, Rs.8,000/- came to be awarded towards rent to petitioners. By the impugned judgment and order of the appellate court, this amount is scaled down to Rs.15,000/- and that too only for maintenance of petitioner no.2 i.e. the minor son of the couple. Amount of rent was scaled down from Rs.8,000/- to Rs.5,000/-. Though prayer clause is inappropriately worded, it cannot be construed to mean that only order of interim maintenance is challenged in appeal by the respondent / husband. What appears to have been challenged is the order dated 16th March 2016 passed by the learned JMFC, Pune, in Criminal Miscellaneous Application No.903 of 2015.

8 Though it was attempted to point out that the learned appellate court has considered documents which were not forming the part of the record of the learned trial Magistrate, perusal of the impugned judgment and order shows that the learned appellate court only referred submissions of the learned advocates appearing for both parties in respect of income of parties. The reasoning part of the impugned judgment and order commences from page 16 and it does not appear that the learned appellate court has placed reliance on documents which were not forming part of the record of the learned trial Magistrate, in partly allowing the appeal filed by the original respondent / husband. Similarly, it is not seen from reasoning in paragraph 16 that the learned appellate court considered that an amount of Rs.5,000/- per month is an amount granted for maintenance of the aggrieved person by the learned Family court. The learned appellate court termed it as an amount of maintenance awarded under Section 24 of the Hindu Marriage Act in the Marriage Petition.

9 In other words, as parties have not quantified income either of the aggrieved person or that of the respondent / husband, both courts below indulged in some speculation to assess income of parties, and therefore, in pursuant to that guess work assessed the quantum of maintenance and rent / alternate accommodation.

10 It is well settled that quantum of maintenance to an aggrieved person depends upon examination of all relevant facts in totality including past life of partner, standard of living they were accustomed to, mode of living, future requirements, habits, wants and class of parties. Similarly, perusal of Section 36 of the D.V.Act makes it clear that provisions of the said Act are in addition to and not in derogation of any other law. As parties have left the courts below for taking up guess work as both of them have not come up with a clear stand regarding income earned by both of them, I do not feel that impugned appellate judgment suffers from any perversity or error. Both courts below indulged in guess work for want of specific data and material.

The aggrieved person herself came up with a stand that she is earning but has not quantified her earning. She is not specific even about income of the respondent / husband. The order passed by the learned trial Magistrate as well as the appellate court is an interim order in proceedings which are supposed to be decided within sixty days. Even if guess work done by the appellate court is considered, then also it cannot be said that the appellate court has indulged in arbitrary or capricious exercise of discretion while deciding the appeal, in the light of pleadings of parties. Therefore the order :

- i) The petition is dismissed
- ii) The learned trial Magistrate is directed to take all necessary steps to decide the pending application under Section 12 of the D.V.Act within a period of twelve months from the date of communication of this order to him.
- iii) Parties are directed to co-operate the learned trial Magistrate in deciding the application under Section 12 of the D.V.Act.

(A. M. BADAR, J.)