

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.258 OF 2016

1. Khaldarkhan Dostkhan Mohmmad Pathan]
Age about 40 years,]
Occ.: Business and Agriculture]
]
2. Mukhkhadar Dostkhan Mohmmad Pathan]
Age about 32 years,]
Occ. Rickshaw Driver]
]
3. Bismillabi Dostkhan Mohmmad Pathan]
Age about 57 years,]
Occ. Household]
]

All of the above are residents of Pohetakli,
Taluka Pathari, District Parbhani.

] Applicants

Versus

1. Reshma Khaldarkhan Pathan]
Age about 36 years,]
Occ. Household]
]
2. Ayesha Khaldarkhan Pathan]
Age 15 years, Occ. Education]
]
3. Heena Khaldarkhan Pathan]
Age 13 years, Occ. Education]
]

*Respondent Nos.2 and 3 since minor
through Respondent No.1 as natural
guardian.*

*All are residents of Shivaji Nagar,
Satpur, Nashik.*

4. The State of Maharashtra

] Respondents

Mr. S.M. Sabrad for the Applicants.

None for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 12TH OCTOBER 2017.

ORAL JUDGMENT :

1. Heard finally, at the stage of admission itself.
2. This Revision Application is preferred challenging the order dated 2nd December 2013 passed by the Assistant Sessions Judge, Nashik, in Criminal Appeal No.194 of 2010. By this impugned order, the learned Appellate Court has enhanced the maintenance awarded to Respondent No.1 from Rs.1,000/- to Rs.5,000/- per month and to Respondent Nos.2 and 3 from Rs.500/- to Rs.2,500/- per month, each, from the date of the application i.e. 12th October 2010.
3. Facts of the Revision Application are to the effect that Respondent No.1 has filed Criminal Miscellaneous Application No.600 of 2010 before the Court of Judicial Magistrate, First Class, Nashik, for various reliefs under Sections 18, 19 and 21 of the Protection of Women from Domestic Violence Act, 2005. The notice

of the said Miscellaneous Application was duly served on the Applicants. However, the Applicants failed to remain present in the said proceeding. As a result, the Court of Judicial Magistrate, First Class, Nashik, was constrained to proceed ex-parte and then, the said Miscellaneous Application was allowed and Applicant No.1 herein was directed to pay the amount of Rs.1,000/- per month to Respondent No.1 and Rs.500/- per month, each, to Respondent Nos.2 and 3. Applicant No.1 was further directed to provide one residential room from his house for accommodation of the Respondents. The prayer made by Respondent No.1 of Rs.5,00,000/- towards compensation for herself and Rs.2,00,000/- as compensation for Respondent Nos.2 and 3, was, however, rejected.

4. Against this order of the learned Magistrate dated 25th October 2010, the Applicants did not prefer any Appeal. However, Respondent No.1, being aggrieved by the meager amount of maintenance awarded by the Trial Court, preferred Criminal Appeal No.194 of 2010. In the said Appeal, the Applicants appeared, but failed to remain present at the time of hearing of the Appeal. As a result, the Appellate Court was also constrained to proceed ex-parte against the Applicants and, on the basis of the uncontroversial facts, it was held that, Respondent No.1 is entitled to get enhanced amount

of maintenance at the rate of Rs.5,000/- per month for herself and Rs.2,500/- per month, each, for Respondent Nos.2 and 3 from the date of the application.

5. While challenging this order of the Appellate Court, the submission of learned counsel for the Applicants is that the Applicants are not given an opportunity to contest the contentions raised by Respondent No.1. In the proceedings before the Trial Court, Applicants could not remain present and similarly in the proceedings before the Appellate Court also, in their absence the matter is proceeded ex-parte, though actually it was fixed for filing of paper-book.

6. However, the record of the Trial Court and the impugned order passed by the Trial Court reveals that, in the said proceedings, Applicants were duly served, but they remained absent and, therefore, as regards the Trial Court order, they cannot raise any grievance. Even as regards the order passed by the Appellate Court, it was necessary for the Applicants to appear on each and every date before the Appellate Court. However, they have not done so. Despite knowing that some order to pay the maintenance is passed against

Applicant No.1 by the Trial Court, he has not challenged the said order. It is Respondent No.1 herein, who has challenged the said order by preferring an Appeal, as the amount of maintenance awarded by the Trial Court was very meager. At-least, in the appellate proceedings, Applicant No.1 should have remained present and contested whatever was alleged against him. The Applicant No.1 has not done that.

7. Here in the case also, no ground is made out, so as to set aside the impugned order passed by the Appellate Court. It is pertinent to note that, there were very specific averments made by Respondent No.1 that Applicant No.1 is having the Electronic Shop and also the agricultural land. It was for Applicant No.1, therefore, to state what was his actual income. He could have produced the Income Tax Returns or some documents to show his income from the said Electronic Shop and the agricultural land. He has not done that in this proceeding also, so that, even without remanding the matter to the Appellate Court, this Court could have considered whether the order of interim maintenance, as enhanced by the Appellate Court, is just and reasonable. However, he has failed to do so in this proceeding also.

8. As held by this Court in the Judgment of *Sau. Alka Vardhaman Bam Vs. Vardhaman Bam, 2000 (1) ALL MR 371*, when wife mentions that husband is getting income from the business and husband merely denies the said statement without producing any documentary evidence, it is not sufficient. In such circumstances, the statement of wife that husband is earning certain income, needs to be accepted.

9. Here in the case, Respondent No.1-wife has categorically stated that, from the Manoranjan Electronics Shop, which Applicant No.1 is running, he is getting Rs.10,000/- to Rs.15,000/- per month and that was in the year 2010. Further, she has also stated that, from the agricultural land, he is getting the income of Rs.5,00,000/- per year. She has also produced '*7/12 Extract*' of the said land. Therefore, sufficient evidence was produced on record by Respondent No.1-wife before the Trial Court, which the Appellate Court has taken into consideration.

10. In this Revision Application, no contrary evidence is produced on record by Applicant No.1 to show that his income is not at the

rate as alleged by Respondent No.1, but, is far less. Thus, absolutely no case is made out for interference in the impugned order passed by the Appellate Court for remanding the matter back to the Appellate Court for fresh hearing.

11. The amount of maintenance awarded by the Trial Court at the rate of Rs.5,000/- per month to Respondent No.1-wife and Rs.2,500/- per month, each, to Respondent Nos.2 and 3-children, can hardly be called as exorbitant; having regard to the income of Applicant No.1, the standard of living and also the essential requirements of the Respondents. Respondent Nos.2 and 3 are the daughters of the age of "15" and "13" years, respectively, and were taking the education at the time of deciding this Miscellaneous Application in the Trial Court and in the Appellate Court. Therefore, their requirements were duly considered by the Appellate Court and enhanced the amount of maintenance, as awarded by the Trial Court.

12. No jurisdictional error is found in the impugned judgment of the Appellate Court, so as, for this Court, to exercise its revisional jurisdiction. Hence, the Revision Application stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]