

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.510 OF 2015

DILIPKUMAR TOTARAM MUNDHE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.Sachin Chandan, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent – State.

Mr.N.M.Jamdar i/b. Mr.C.R.Benke, Advocate for Respondent No.2.

CORAM : A. M. BADAR, J.

DATE : 1st MARCH 2017.

P.C. :

1 This is a revision petition challenging the appellate order confirming order granting interim maintenance to the aggrieved person i.e. wife and her two children under the provisions of Section 23 of the Protection of Women from Domestic Violence Act, 2005, (“Domestic Violence Act” for the sake of brevity).

2 Heard learned advocate appearing for the revision petitioner / original respondent at sufficient length. He argued that the aggrieved person is indulging in illicit relations with one Mahesh Kale, and therefore, she is not entitled for maintenance. The learned advocate further argued that revision petitioner / husband is not having sufficient means to pay maintenance.

3 I have perused the order passed by the learned JMFC, Kalyan, on 1st August 2014 allowing the application for interim maintenance under Section 23 of the Domestic Violence Act, as well as the appellate order confirming the interim maintenance passed by the learned Additional Sessions Judge.

4 The revision petitioner is invoking revisional jurisdiction of this court and it is well settled that this jurisdiction is to be exercised in exceptional cases when there is glaring defect of procedure or manifest error on the point of law which has resulted in miscarriage of justice. It is seen from both orders that the aggrieved person has claimed interim maintenance for herself

as well as for her two children, undisputedly begotten from the revision petitioner. It is seen from paragraph 13 of the order of the trial court that it has considered the documentary evidence placed on record in support of the claim that the respondent before the trial court i.e. revision petitioner is earning some income in order to pay maintenance. Statement of commission payable to the husband issued by the LIC was considered by the learned trial court while granting interim maintenance. The agricultural income was also taken into consideration by the learned trial court. Sufficiency of evidence cannot be gone into in the revisional jurisdiction and in this case, the appellate court has concurred with the finding of fact arrived at by the learned trial court. It cannot be disputed that quantum of maintenance lies in discretion of the learned trial Magistrate and that discretion has been duly exercised and such finding cannot be termed as perverse. The argument of the applicant that an aggrieved person is having extra marital relationship is totally irrelevant for the purpose of deciding the present revision petition, leave apart there is no iota of evidence to substantiate this fact.

5 In view of the foregoing discussion, the revision petition is devoid of merit and the same is rejected.

(A. M. BADAR, J.)