

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.549 OF 2015

Sunil Laltaprasad Gupta)...Applicant

V/s.

Soni Sunil Gupta & Anr.)...Respondents

Ms. Nisha Mehra, Advocate for the Applicant.

Mr. Ameet Palkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 8th MARCH, 2017.

P.C. :

By this Revision Petition, the Revision Petitioner/Husband/Original Respondent is challenging the judgment and order dated 5.9.2015 passed by the learned Additional Sessions Judge, Greater Bombay, Mumbai dismissing his Criminal Appeal bearing no.240 of 2014 whereby he had challenged the order of the learned trial Court in Criminal Case No.22/DVN/2013 filed by the Respondent No.1 herein/Original Applicant/Aggrieved Person.

2 Heard learned Advocate appearing for the Revision Petitioner/Husband. By taking me through the chronology of events as well as attempts for settlement and affidavits filed by both the parties on record, the learned Advocate argued that Revision Petitioner/Husband is not owner owner of grocery shop. His father is owner of that shop. Revision Petitioner is not a man of means so as to pay maintenance as directed by the learned Magistrate confirmed by the learned Additional Sessions Judge. The learned Advocate further argued that Revision Petitioner has opened an account in the name of his two girl children and is regularly depositing an amount of Rs.1,000/- each in those accounts so that after 14 years, his daughters can be married. The learned Advocate further argued that grocery shop is owned by father of the Revision Petitioner and the Revision Petitioner helps his father in running that shop. Income from that grocery shop as reflected from income-tax returns is only Rs.2 Lakhs per year. It is argued that the domestic violence is not proved nor there is documentary proof of the income of the Revision Petitioner/Husband. According to the learned Advocate for the

Revision Petitioner, the impugned judgment and order is perverse and, therefore, it needs to be quashed and set aside.

3 The learned Advocate for the Revision Petitioner/Husband further argued by relying upon notice dated 20.8.2013 sent by the Revision Petitioner to the Aggrieved Person that the Aggrieved Person left the matrimonial house on 17.8.2013 along with children and, therefore, the Revision Petitioner had filed application for restitution of conjugal rights. In submission of the learned Advocate for the Revision Petitioner, Aggrieved Person did not join company of the Revision Petitioner despite, order of the Family Court.

4 None appeared for the Respondent No.1. The learned APP for the Respondent No.2-State.

5 I have carefully considered the arguments so advanced so also records and proceedings made available.

6 The Original Respondent No.1/Husband is invoking revisional jurisdiction of this Court in challenging the orders of the Courts below concurrently holding that the Aggrieved Person and her children are entitled for maintenance from the Revision

Petitioner at the rate of Rs.6,000/- per month for the Aggrieved Person and @ Rs.3,000/- each for two minor daughters namely, Sejal and Shraddha. It is well settled that the revisional jurisdiction of this Court is to be exercised sparingly when there is manifest error of law or glaring defect of procedure resulting in miscarriage of justice. Sufficiency of evidence cannot be gone into and the finding of fact recorded by the Courts below cannot be interfered with unless and until it is perverse.

7 Keeping in mind this limitation arena for exercising revisional jurisdiction of this Court, let us consider whether impugned judgment and order rendered by the Courts below is suffering from any error of law or because of defect in procedure.

8 Respondent No.1-Wife is the Aggrieved Person. She preferred an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('DV Act' for the sake brevity) before the learned Metropolitan Magistrate, Mumbai claiming several reliefs including one under Section 23 of the said Act for interim maintenance. Apart from pleading several acts constituting domestic violence in paragraph 13 of the said

application, the Aggrieved Person has pleaded that she is house wife having no source of income. She is having responsibility to maintain two minor girl children fathered by the present Revision Petitioner. It is further pleaded in the Application under Section 12 of the DV Act by the Aggrieved Person that the husband is having lucrative family business of grocery and grain shop in the name of Gupta Grain Stores at Sanjay Gandhi Nagar, Jogeshwari (East), Mumbai. The Aggrieved person further pleaded that family income of her husband is more than Rs.80,000/- per month and his share in that income is Rs.40,000/- per month. With this pleadings, maintenance of Rs.17,000/- per month was claimed for the Aggrieved Person and her two girl children

9 This application came to be opposed by the present Revision Petitioner by filing reply. The Revision Petitioner denied acts of domestic violence and also denied his income. Necessary pleading to that effect can be found in paragraph 7 of his reply, which reads thus:

“7. With regards to para 8, the Respondent No.1 states that the Respondent No.1/husband was ready and willing to reside with the Applicant separately in a

separate accommodation, however, the Applicant did not agree and wanted to reside with her parents, and now she is unnecessary dragging the family member of the Respondent/Husband. Further the Respondent No.1 is not earning Rs.40,000/- per month as falsely alleged by Applicant, the Respondent No.1 is assisting his father in small store.”

10 It is thus, clear that the Revision Petitioner/Original Respondent except denying averments regarding his income has not stated anything about his own income in his reply. Income of a person is generally a fact which especially within his own knowledge. It was incumbent on the part of the Revision Petitioner/Respondent No.1 to plead his own income which is fact especially within his own knowledge. Section 106 of the Indian Evidence Act, 1872 assumes important on this aspect.

11 Considering the pleadings of parties as discussed (Supra), the learned trial Magistrate by an order dated 18.2.2014 was pleased to allow application for interim maintenance partly. Instead of Rs.17,000/- per month, total maintenance of Rs.12,000/- per month came to be awarded. The Aggrieved Person

is held to be entitled for maintenance @ Rs.6,000/- per month whereas each minor daughter is held entitled to interim maintenance @ Rs.3,000/- per month. For arriving at quantum of maintenance, the learned trial Magistrate considered averments made in the application by the Aggrieved Person which are on affidavit. Defence raised by the Revision Petitioner/Respondent was also considered by the learned Trial Magistrate. Even in Appeal, the learned Additional Sessions Judge in paragraph 10 of the judgment and order has held that contention of husband that he earns Rs.5,000/- per month by working in the shop of his father is not acceptable. The learned Appellate Court has recorded finding that considering the income of the husband and standard of living of both the parties, the maintenance awarded by the trial Court is just and reasonable. In paragraph 9 of the appeal judgment, income of the parties is considered.

12 It is thus, seen that it cannot be said that the impugned judgment and order is perverse and not based on material produced on record by the parties, in the nature of their pleadings. Quantum of maintenance to aggrieved person depends

on examination of all relevant factors in totality including standard of living to which parties are accustomed to apart from future requirements, class of parties, etc. In the era of human rights of gender equality, dignity of woman is unquestionable and the same is also recognised under Articles 14, 15 and 21 of the Constitution of India. In the case in hand, duly sworn testimony of the Aggrieved person shows that she is unemployed whereas her husband, i.e. Revision Petitioner is an able bodied person who according to his own stand is helping his father in carrying out grocery business. In this view of the matter, by no stretch of imagination it can be said that maintenance of Rs.6,000/- to wife and Rs.3,000/- each to girl children of the Revision Petitioner is excessive or harsh. Opening of an account in the name of girl children by the Revision Petitioner for a term of 14 years in order to take care of their marriage is of no assistance at this stage because ultimately, girl children will have to survive for attaining the marriageable age. For that purpose payment of maintenance

to them by their father is must. In this view of matter, I see no merits in the Revision Petition and the same is dismissed.

(A. M. BADAR, J.)