

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.718 OF 2016

RAKESH ARJUN SOLANKI)...APPLICANT

V/s.

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

Ms.Poonam Ankleshwaria, Advocate for the Applicant.

Ms.V.S.Mhaispurkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 23rd FEBRUARY 2017.

P.C. :

1 By this revision petition, revision petitioner / husband is challenging the order dated 17th November 2016 passed by the learned Additional Sessions Judge, Greater Bombay, Mumbai, in Criminal Appeal No.866 of 2016 thereby rejecting the appeal filed by the revision petitioner / husband under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (Domestic Violence Act for the sake of brevity).

2 Heard the learned advocate appearing for the revision petitioner / original respondent / husband. She vehemently argued that infact the aggrieved person / wife had filed an application under Section 125 of the Code of Criminal Procedure before the Family court which had awarded maintenance to her. The aggrieved person had preferred an application under Section 12 of the Domestic Violence Act by suppressing the fact that she has capacity to earn her livelihood. Still, she is claiming interim maintenance, and therefore, the revision petitioner had filed application to issue summons to the employer of the aggrieved person for producing record of salary of the aggrieved person. By placing reliance on judgment of Hon'ble Delhi High Court in the matter of **Rupali Gupta vs. Rajat Gupta**¹ and particularly paragraph 11 thereof, the learned advocate argued that capacity of earning of a spouse is a relevant consideration while awarding maintenance. By placing reliance on judgment of Hon'ble Apex Court in the matter of **V.K.Sasikala vs. State Rep. By Superintendent Of Police**² the learned advocate argued that documents can be called at any stage of the proceeding.

1 MANU/DE/2384/2016

2 2012 VOL 9 SCC 771

3 I have carefully considered the submissions so advanced and perused the order passed by the learned trial court as well as the appellate order passed by the learned Additional Sessions Judge. Undisputedly, an aggrieved person / wife had preferred an application under Section 12 of the Domestic Violence Act seeking various reliefs and has also prayed for interim maintenance. It is seen from orders passed by the courts below that the revision petitioner / husband applied for calling record of salary of the aggrieved person and the said application was rejected on 13th October 2016 by the learned trial court with a reason that alleged income earned during the period from July 2015 to October 2015 would not be a relevant factor to consider the prayer for maintenance made in the interim application. The said order was carried in appeal and the learned appellate court considered the fact that the application for calling record was moved just one day prior to fixing the application for interim relief for arguments. The appeal was dismissed with a direction to the learned trial court to dispose of original proceeding within the stipulated period as prescribed by the Domestic Violence Act.

4 The matter arose from interim order passed by the learned trial court and confirmed in the appellate court. As yet, even no order for interim maintenance is passed by the learned trial court. The learned appellate court has already directed disposal of the main application in a time bound manner as prescribed by the Domestic Violence Act. No doubt, capacity to earn is a relevant factor, but at the stage of deciding interim application such calling of record is not warranted. Interim applications are decided on affidavit of parties. At the stage of trial, parties are free to call any documents and examine witnesses. The Domestic Violence Act itself provides for said option and the amount of maintenance awarded by some other court is required to be considered while passing the order granting maintenance.

5 In this view of the matter, rulings so cited have no application to the facts of the instant case. I see no error of law committed by the courts below. Hence the order :

i) Revision Petition is dismissed.

(A. M. BADAR, J.)