

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 217 OF 2017

ARVIND MADHUKAR NAIK., ... Petitioner

Versus

VIDHYA ARVIND NAIK @ PATIL., ... Respondent

Shri R. J. Pinto, Advocate for the Petitioner.

Coram:- C. V. BHADANG, J.

Date:- 7th February 2018

ORAL ORDER:

Heard Shri Pinto, the learned Counsel for the petitioner.

2. The challenge in this petition, under Article 227 of the Constitution of India read with Section 482 of Cr.P.C., is to the judgment and order dated 18.02.2017, passed by the learned Additional Sessions Judge in Criminal Revision Application No. 18/2016, granting interim maintenance of Rs.5,000/- to the respondent-wife.

3. The brief facts are that the petitioner and the respondent are married and according to the respondent, she was driven out of the matrimonial house on 28.05.2014, along with her father and brother. It was contended that the petitioner has deserted her and has not provided for her maintenance and that she is unable to maintain herself.

4. In such circumstances, the respondent approached the learned Magistrate for maintenance under Section 125 of Cr.P.C. The amount of maintenance sought in the main application is Rs.10,000/- per month. The respondent filed application for interim maintenance, which came to be rejected by the learned Magistrate by order dated 08.02.2016, inter alia, on the ground that the respondent had not filed the affidavit of her father and brother, to show that she was compelled to leave the matrimonial house on 28.05.2014. It was also found that the respondent is educated and claims to have answered her T.Y. B.Com. The learned Magistrate found that there was a delay of almost a year in lodging the complaint and as the respondent had failed to substantiate her case that she was driven out of the house, she was not entitled to claim maintenance.

5. The learned Sessions Judge in revision found that admittedly, the petitioner and the respondent are staying separate from May, 2014 and the question whether, she was compelled to leave the matrimonial house or she has left the matrimonial house of her own accord, is a matter which can be gone into, after the parties lead evidence. Considering the fact that the petitioner is employed as a line helper in the Electricity Department and earning gross salary of Rs.15,346/- per month, the learned Sessions Judge granted interim maintenance of

Rs.5,000/- per month.

6. It is submitted by Shri Pinto, the learned Counsel for the petitioner that the learned Magistrate had rightly rejected the application, after considering the fact that there was delay on the part of the respondent in filing the complaint and the affidavits of the father and the brother were not filed, to show that the respondent was driven out of the matrimonial house. It is submitted that the respondent has left the matrimonial house on her own accord. It is submitted that the net carry home salary of the petitioner is only Rs.6,954/- and the petitioner is not able to pay the maintenance of Rs.5,000/-. However, during the course of the arguments at bar, it was not disputed that the petitioner is complying with the order of maintenance. The learned Counsel has placed reliance on the findings recorded in the enquiry conducted by the police, in the complaint lodged by the respondent. It is submitted that the Investigating Officer, on enquiry has filed 'A' final summary in respect of the said complaint. It is submitted by the learned Counsel for the petitioner that the 'A' final summary report has been granted by the learned Magistrate.

7. I have carefully considered the circumstances and the submissions made and I do not find that all these aspects can be gone into threadbare, at this stage, particularly, when all that the

learned Sessions Judge has done, is to grant interim maintenance.

8. Under Section 125 of Cr.P.C., a wife can not only claim maintenance when she is deserted, but, also in a case where the wife can justifiably stay separate, when she can demonstrate that she apprehends danger to her life and limb, in staying in the matrimonial house. All these aspects can be gone into when the parties have the benefit of leading evidence. Normally, this Court would be slow in interfering with the order of the present nature. Even insofar as the reliance placed on the pay slip is concerned, it is in respect of December, 2014. There is no material to show as to what is the present salary of the petitioner, who is in State Government service.

9. Considering the overall circumstances, I do not find that any case for interference is made out. The petition is accordingly dismissed.

C. V. BHADANG, J.

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