

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.124 OF 2015
WITH
WRIT PETITION NO.3627 OF 2017

Atul Omkar Sahay Jauhari ...Petitioner
vs.
The State of Maharashtra and Anr. ...Respondents

Mr. Atul Omkar Jauhari, the Petitioner in person.
Ms. Neena Jauhari, the Respondent in person present.

CORAM : M. S. SONAK, J.

RESERVED ON : 14th DECEMBER, 2018

PRONOUNCED ON : 21st DECEMBER, 2018

JUDGMENT:

. Heard Mr. Atul Omkar Jauhari, the Petitioner in person
as well as his wife Ms. Neena Atul Jauhari, the Respondent No. 2
in person.

2. The challenge in Writ Petition No. 124 of 2015 is to the
orders dated 31st December, 2012 and 4th August, 2014 made by
the Judicial Magistrate and the Sessions Judge in proceeding
under the Protection of Women from Domestic Violence Act, 2005
(D.V. Act).

3. This Court, by order dated 21st December, 2016, issued rule in the Petition but declined the prayer for interim relief. The order dated 21st December, 2016 read thus:

1 The above Writ Petition takes exception to the judgment and order dated 04/08/2014 passed by the learned 2nd Additional Sessions Judge, Thane by which order the Appeal filed by the Petitioner against the judgment and order dated 31/12/2012 passed in the proceedings initiated under the Protection of Women from Domestic Violence Act, 2005 being S.C.C. No.367 of 2008 is taken exception to by way of the above Petition.

2 There is a concurrent finding of fact recorded by both the Courts below that the Petitioner herein has caused domestic violence to the Respondent wife. The said finding has been principally assailed in the above Petition.

3 Hence "Rule." The Respondent No.2 waives notice.

4 In terms of the final order passed by the learned Civil Judge Junior Division and JMFC, Vashi, the Petitioner herein who was the Respondent in the said proceedings has been restrained from creating third party interest in the matrimonial house. In so far as the maintenance granted by the learned Civil Judge Senior Division Thane is concerned, the said order has come to an end in view of the fact that the Marriage Petition filed by the Petitioner herein came to be dismissed by the said Court. Hence when the matter reached by way of an Appeal to the Sessions Court against the order dated 31/12/2012 passed by the learned CJJD & JMFC, Vashi, the Appellate Court having regard to the fact that the maintenance order passed by the learned Civil Judge, Senior Division Thane has come to an end in view of the dismissal of the Marriage Petition filed by the Petitioner herein has enhanced the maintenance to the Respondent No.2 from

Rs.5,000/to Rs.25,000/. This enhancement as indicated above is ascribable to the fact that the maintenance granted by the Civil Judge, Senior Division, Thane has come to an end. The reason for grant of the said maintenance has been mentioned in the impugned order.

5 It is required to be noted that the Respondent No.2 herein is working as a Yoga Teacher from which, according to her, her income is ranging from Rs.6,000/to Rs.8,000/. The couple has two grown up children i.e. a son who is 26 years old who is pursuing management studies in IMT, Gaziabad and a daughter who is 19 years old who is also pursuing management studies in SIES, Nerul, Navi Mumbai. The fees of the son and daughter are paid by the Petitioner. Undoubtedly there would be other expenses which the Respondent No.2 wife would have to take care of especially having regard to the fact that they are grown up children. In my view, therefore, no interim relief can be granted in respect of the amount of maintenance as also no interim relief can be granted in respect of the Respondent No.2 being permitted to occupy the bed room in the flat in question.

4. In the present matter, both Mr. Atul Jauhari and his wife Neeena Jauhari had applied to the Committee constituted under Chapter IV-A (ii) of the Bombay High Court Appellate Side Rules for permission to appear in person. The Committee, after taking note of the fact that Mr. Atul made false statement, declined to accord any permission to Atul Jauhari to present his case in person. However, such permission was granted to his wife Ms. Neena.

5. Although, it is true that Atul Jauhari did make a false statement before the Committee, in the peculiar circumstances of the present matter, Atul Jauhari was permitted to present his case in person. Atul Jauhari pointed out that he had in the past engaged several advocates to appear on his behalf and his advocates have now refused to appear on his behalf. His wife Neena Jauhari has also made complaints that her husband Atul keeps seeking adjournments in this matter thereby delaying, final disposal of this matter. Therefore, taking into consideration all these circumstances, Atul Jauhari was permitted to present his case in person.

6. Mr. Atul Jauhari, the Petitioner submits that no less than 11 complaints were filed by his wife to the police authorities against him. However, such complaints were false and no substance was found in any such complaints. He submits that there was absolutely no material on record to establish that the Petitioner had indulged in any domestic violence as defined under Section 3 of the D.V. Act. He submits that in absence of any material on record to establish that there was any domestic violence, two Courts clearly exceeded their jurisdiction in making

the impugned orders. Mr. Atul submits that in the present case, the protection officer has not submitted any domestic incident report and in the absence of such report, the Magistrate, was not at all empowered to make the impugned order. He submits that this is serious infirmity in making the impugned orders, which therefore deserve to be set aside.

7. Mr. Atul submits that he is jobless since 2010. He does not earn any thing and this aspect was not taken in to consideration by the two Courts whilst awarding maintenance. He submits that without there being any documentary evidence as to the earning of the Petitioner. The two Courts, have wrongly concluded that the income of the Petitioner was Rs. 25 lakhs p.a. The Petitioner submits that in fact the record indicates that the Petitioner's salary was hardly Rs. 60,000/- p.m. in the year 2008 an therefore it is inconceivable that his income would be Rs. 25 lakhs p.a. by the year 2012. He submits that there is no evidence that the Petitioner was working with M/s. M.S. Thor (U.K based company). Mr. Atul submits that the amount of maintenance awarded to the wife and children is excessive. In awarding such maintenance, the two Courts failed to appreciate that the

Respondent No. 2 is a Yoga teacher who used to higher hall to conduct her Yoga classes. Therefore, the two Courts erred in believing the Respondent No. 2 when she stated that her income was only Rs. 6,000/- p.m. In any case, the two Courts failed to consider that the income of the Respondent No. 2 must have increased manifold in the last 10 years because she continue to take Yoga classes and private Yoga tuitions.

8. In Writ Petition No. 3627 of 2017, the Petitioner challenges mainly orders dated 3rd August, 2017 28th August, 2017 issued by J.M.F.C., issuing warrants against him for failure to comply with orders for payment of maintenance.

9. Mr. Atul states that even though he has cleared all the arrears of maintenance and there are presently no arrears of maintenance to be paid, no less than 3 distress warrants came to be issued against the Petitioner. The Petitioner submits that this is totally inappropriate and therefore executing Courts be directed to forthwith withdraw such distress warrants.

10. Ms. Neena Jauhari, the Respondent No. 2 defends the

impugned orders on the basis of reasoning contained therein. She submits that the Petitioner is a well qualified person and earns substantially. She submits that the Petitioner is harassing her and is determined to deny her maintenance. She submits that there are still arrears of over Rs. 11 lakhs or even more of maintenance. She submits that even after issuance of distress warrant, the Petitioner avoid the payment of maintenance. She therefore submits that this Petition may be dismissed and the Petitioner be directed to clear all the arrears.

11. The written submissions placed on record by the Petitioner on the previous occasion have also been taken into consideration as part of Petitioner's contentions.

12. The rival contentions now fall for my determination.

13. In the present case, there is no dispute that the Petitioner and Respondent No. 2 are in domestic relationship with one another as defined under Section 2(f) of the D.V. Act. There is evidence that the Petitioner has indulged in domestic violence as against the Respondent No. 2. The Petitioner is not right in his

contention that the police authorities found no substance in the 11 complaints made by Respondent No. 2 against the Petitioner. In any case, the scope of criminal proceeding and the scope of proceeding under D.V. Act is quite different. In the proceeding under D.V. Act the independent evidence was lead by the parties and upon considering of the same, the two Courts have recorded concurrent findings that the Petitioner indeed perpetrated domestic violence on the Respondent No. 2. The Petitioner has not been able to demonstrate any errors or perversity in these findings of fact recorded by two Courts on the aspect of domestic violence.

14. The material on record indeed establishes that the Petitioner used to beat and abuse the Respondent No. 2. The Respondent No. 2 has deposed to the domestic violence suffered by her in substantial details. Her evidence has not been dented either in the course of cross examination or the other evidence on record. Significantly, the Respondent No. 2 deposed that the Petitioner's own sister also made attempts at conciliation and in order to convince the Petitioner to behave better with Respondent No. 2 and also to accept the children in the new house. Since, the case of the Petitioner is that he has perpetrated no domestic violence

whatsoever against Respondent No. 2, the minimum that was expected of the Petitioner was to examine his own sister who would have been in the best position to throw light on the domestic circumstances, at the matrimonial home of the Petitioner and Respondent No. 2. However, the Petitioner, failed to examine his own sister and therefore, adverse inference is liable to be drawn against the Petitioner.

15. The two Courts have recorded findings that the Petitioner indeed perpetrated domestic violence upon the Respondent No. 2. This domestic violence was in the form of both physical as well as mental abuse. The Petitioner by refusing the maintenance to Respondent No. 2 also perpetrated economical abuse upon the Respondent No. 2. Despite, orders for maintenance, the Petitioner, refused to pay the maintenance requiring the Respondent No. 2 to repeatedly approach the various Courts of law. The Respondent No. 2 now states that the Petitioner is still due and payable the arrears of maintenance and over Rs. 11 lakhs, for which she is made to approach the Courts.

16. There is no substance in the contention of the Petitioner

that he is unable to maintain Respondent No. 2. The record indicates that during the pendency of H.M. Petition NO. 322 of 2008 instituted by the Petitioner against the Respondent No. 2 seeking for divorce, there was an order which required the Petitioner to pay maintenance of Rs. 20,000/- to Respondent No. 2. However, this Petition came to be dismissed on 21st April, 2014. The Petitioner as recorded by Sessions Judge, in the impugned order dated 4th August, 2014, had not chosen to challenge the order dated 21st April, 2014 dismissing his H.M. Petition No. 322 of 2008. Since the maintenance of Rs. 20,000/- p.m. was *Pendente lite*, the same terminated consequent upon the dismissal of H.M. Petition No. 322 of 2008. The Magistrate, in the proceeding under D.V. Act quite correctly took cognizance of this circumstance and awarded maintenance of Rs. 25,000/- to Respondent No. 2, taking into consideration the time lag and the fact that the cost of living increased with time.

17. The Petitioner, has not at all been candid as regards his employment status. His entire objective appears to be to suppress facts and take advantage of the unfortunate situation in which Respondent No. 2 is unable to produce documents or documentary

evidence as regards the Petitioner's employment status and precise income. However, there are attendant circumstances, on basis of which the two Courts have rightly concluded that the Petitioner is very much in a position to pay the maintenance awarded by them to Respondent No. 2. There is neither any perversity nor any jurisdictional error in the findings recorded by the two Courts or the approach of the two Courts.

18. The Respondent No. 2 has herself admitted to being a Yoga teacher. No doubt, Respondent No. 2 must be earning some income as Yoga teacher. However, it is only after taking into consideration this income that the maintenance amount has been determined by the two Courts.

19. This is not a case where the Magistrate has not taken into consideration the domestic incidents reports or the report of the service provider. The Magistrate has taken into consideration both the documentary as well as oral evidence placed on record by both the parties from which it is evident that the Petitioner has perpetrated domestic violence upon the Respondent No. 2. The Magistrate as well as Sessions Judge have taken into consideration

the overall facts and circumstances of the case and the findings recorded by the two Courts are amply borne out from the material on record. Clearly, therefore, there is no case made out to warrant interference.

20. There is no merit in the grievance made by the Petitioner in Writ Petition No. 3627 of 2017. The J.M.F.C. upon verification that the Petitioner is avoiding payment of maintenance, even though there was no stay from any higher Courts, was left with no alternative than issuing warrants against the Petitioner. By order dated 3rd August, 2017, this is precisely what the J.M.F.C has done. By application at Exhibit 25, the Petitioner applied for recall of the warrant. The J.M.F.C, upon detailed consideration of all Petitioner's contention and the authorities relied upon by him, rejected this application by order dated 28th August, 2017. There is no error in the two orders so as to warrant any interference with them.

21. The Courts, before issuing warrants may verify whether the Petitioner is in arrears. This should not be taken as licence by the Petitioner to delay the execution proceeding or to raise some

additional and extraneous issues like the issues which he attempted to raise in the course of argument. The Petitioner attempted to urge that the payments made by him for education of his children should also be construed as payments made for maintenance of Respondent NO. 2 in terms of the impugned order and such other issues. Needless to add that such contention are totally misconceived and therefore, may not be entertained by the executing authorities.

22. The Petitioner has also relied upon the following authorities in support of the Petition.

- (1) ***Govinda Bhagoji Kamble and Ors. vs. Sadu Bapu Kambale, (2005) 1 Mh.L.J. 651.***
- (2) ***Ashok Yeshwant Samant vs. Suparna Ashok Samant, 1991 Cri.L.J. 766.***
- (3) ***T. Kausalya vs. T. Narayana Reddy, 1998 Cri.L.J. 1795***
- (4) ***Sanjay Bhardwaj and Ors. vs. The State, Cri. M.C. No. 491 of 2009. (Delhi High Court)***
- (5) ***Ritu Raj Kant vs. Anita, Cm(M) No. 1790 of 2006, Delhi High Court.***

(6) ***Kaushik vs. Sangeeta Kaushik and Ors., Writ Petition No. 32 of 2014***

(7) ***Bhagwan Dutt vs. Kamla Devi and Anr., Criminal Appeal No. 228 of 1970.***

23. The decision in ***Govinda Kamble*** (supra) is not at all relevant to the grounds urged by the Petitioner in the present proceeding and therefore can be of no assistance to the Petitioner. In case of ***Ashok Samant*** (supra), the learned single Judge of this Court has held that there is no provision either under Section 125(3) or 127 (1) of Cr.P.C to enable the trial Judge to proceed with the application on the condition of deposit part or whole of the arrears of interim maintenance. Again even this is not at all relevant to the issue raised in the present Petition. Finally the decision of the learned single Judge of Andhra Pradesh High Court in ***T. Kausalya*** (supra) entirely based on the facts peculiar to the said matter on the issue of maintenance.

24. The ruling in ***Sanjay Bhardwaj*** (supra) and ***Ritu Raj Kant*** (supra) of the Delhi High Court turn on the peculiar facts

which were found to be involved in the said matters. They have no bearing on the issue raised in the present Petition. In case of **Kaushik** (supra) decided on 5th May, 2014, the learned single Judge of this Court has held that in the absence of any findings as to domestic violence, the Magistrate has no power to award the maintenance. In the present case, based upon the evidence on record, the Magistrate, has recorded clear findings that the Petitioner perpetrated domestic violence upon the Respondent No. 2. Therefore, the decision in **Kaushik** (supra) is also not applicable. The decision in the case of **Bhagwan Dutt** (supra) relates to the expression “*Unable to maintain herself*” in the context of maintenance. In the present case, consistent with the ruling of the Apex Court, the two Courts have correctly concluded that the Petitioner is liable to pay maintenance in which she was accustomed before she become a victim of domestic violence.

25. In any case, refers to later decision in the case of **Shamima Farooqui vs. Shahid Khan, (2015) 5 SCC 705**, the Hon'ble Supreme Court has held that inherent and fundamental principle behind Section 125 of Cr.P.C. is for the amelioration of the financial state of affairs as well as the mental agony and

anguish that a woman suffers when she is compelled to leave her matrimonial home. The statute commands that there have to be some acceptable arrangements so that she can sustain herself. This principle of sustenance gets more heightened when the children are with her. Sustenance does not mean mere survival. A woman who is constrained to leave matrimonial home, should not be allowed to feel that she has fallen from grace and move hither and thither for arranging sustenance. As per law, she is entitled to lead a life in similar manner as she would have lived in the house of her husband. Maintenance under Section 125 of Cr.P.C. has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar.

26. At paragraph 19, the Hon'ble Supreme Court observed thus :

“19. From the aforesaid enunciation of law it is limpid that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes her faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can

impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance allowance”.

27] In **Bhuwan Mohan Singh Vs. Meena and ors (2015) 6 SCC**

353 the Hon'ble Supreme Court at paragraph 2 has observed thus:

“2. Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short “the Code”) was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life “dust unto dust”. It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route

unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds”.

28] In ***Badshah Vs. Urmila Badshah Godse and Anr, (2014)***

1 SCC 188, the Hon'ble Supreme Court has commended purposive interpretation to the provisions of law which deal with maintenance. The purpose is to achieve 'social justice'. In interpreting provisions relating to maintenance, the court is expected to bridge the gap between law and the society. Provisions relating to maintenance fall in the category of legislation which is aimed at empowering the destitute and achieving the social justice, equality and dignity of the individual. In dealing with such cases, there is necessity for drift from the 'adversarial litigation' to 'social context adjudication' which is the need of the hour. The Hon'ble Supreme Court has observed that law regulates relationship between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law to achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even

intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law.

29. Applying the aforesaid principles to the facts of the present case, it cannot be said that the maintenance amount awarded is excessive.

30. Therefore, for all the aforesaid reasons, there is no case made out in these Petitions to interfere with the impugned orders. Both these Petitions are liable to be dismissed and are hereby dismissed.

31. There shall be no order as to costs.

(M. S. SONAK, J.)