

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 118 OF 2018

Mr. Nazir Mistry @ Manish Mistry ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

Mr. Amin Solkar i/b Misbah Solkar for the Applicant.

Mrs. N.S. Jain, APP for the Respondent/State.

CORAM : NITIN W. SAMBRE, J.

DATE : 15th MARCH, 2018

P.C.:

. The Respondent wife was awarded Rs.2,000/- towards the cost of application and Rs.12,000/- towards the maintenance to be paid by the Applicant husband for the minor daughter by the impugned Order dated March 24, 2017 passed by the Metropolitan Magistrate, 69th Court, Mazgaon, Mumbai in Domestic Violence proceedings initiated vide CC No. 77/DV/2016.

2 The Respondent wife feeling aggrieved in not awarding maintenance, preferred an Appeal under Section 29 of the Domestic Violence Act being Criminal Appeal No. 305 of 2017, which was allowed by the Additional Sessions Judge vide its Order dated December 16, 2017 whereby maintenance of Rs.12,000/- and Rs.7,000/- was respectively awarded to the wife and daughter and Rs.3,000/- towards accommodation charges. As such, this application.

3 The learned Counsel for the Applicant husband Mr. Solkar, strenuously urged that the findings recorded by the learned Magistrate that the Respondent wife is gainfully employed as she has kept child i.e. Respondent No.2 in day care is based on inferences drawn from the admitted pleadings. According to him, it was brought to the notice of the Magistrate that wife is gainfully employed and earning around Rs.50,000/- per month. Prima facie, it was accepted by the learned Magistrate. The Appellate Court, according to him, has committed an error in awarding the maintenance to the wife. He fairly concedes that payment of maintenance to the daughter is his responsibility.

4 According to him the impugned order passed in Appeal warrants interference.

5 In the backdrop of the submission if the order of the Magistrate is perused, the present Applicant husband has come out with the plea that Respondent wife is employed with Wipro and getting salary of Rs.80,000/-. She is also working as beautician and earning handsome profit out of it. The capacity to earn of the Respondent wife is inferred by the Magistrate based on the fact that she has kept the child in a day care institute wherein she is paying substantial amount towards the charges of the such day care unit.

6 So far as the said findings of the learned Magistrate are concerned, there is hardly any material evidence on record to interfere that a) the wife is gainful employed and b) she has own source of income so as to maintain herself. The

learned Magistrate has presumed that since the child is kept in day care home, the wife must be earning and as such proceeded to refuse maintenance.

7 In Appeal under Section 29 of the Domestic Violence Act, the Appellate Court re-appreciated that the entire gamut of the matter and proceeded to award maintenance to both i.e. Respondent wife and the daughter including amount towards accommodation charges. It appears from the order of the Appellate Court that the Appellate Court was alive to the fact that there is no documentary or oral evidence so as to infer the gainful employment of the Respondent wife. The Appellate Court also noticed that the Magistrate has proceeded to deny the maintenance to the wife upon a presumption that she is earning.

8 The interim arrangement by an order of learned Sessions Court in exercise of the Appellate powers is based on the consideration that the Applicant husband is having his own commercial establishment from where he is operating his business.

9 That being so, in my opinion, the view expressed by the Appellate Court is a possible view which, does not warrant any interference in the revisional jurisdiction as no error of the jurisdiction could be noticed.

10 At this stage, Mr. Solkar made a submission that Respondent wife is now earning handsome amount by taking employment at some other place. He claims that there is no Domestic Violence as the Applicant has already divorced the Respondent wife. So far as the submission *qua* the absence of domestic violence

is concerned once the earlier domestic relationship is admitted, whether there was domestic violence or not is an issue which can be appreciated at the stage of final decision of the main matter.

11 On the issue of latest earning source of wife, it will be always open for the Applicant husband to move to learned Court below for modification of the amount of maintenance, provided he substantiates such claim by producing appropriate evidence to that effect.

12 With above liberty and observations, the Revision stands dismissed.

(NITIN W. SAMBRE, J.)