

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition NO. 1233 OF 2016

Prakash Bajirao Sonawane
And Ors

...Petitioners

Versus

Rekha Prakash Sonawane
And Anr

...Respondents

....

Mr. Sachin K. Hande, Advocate for the Petitioners.
Mr. C.M. Jadhav i/b. S.C. Legal, for Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 03rd MAY, 2018

P.C.

1. Heard Mr. Sachin Hande, learned counsel for the petitioners and Mr.C.M. Jadhav, learned counsel for respondent No.1, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 24.11.2015 passed by the learned Additional Sessions Judge, Pune in Criminal Appeal No.465/2015. By said order, the learned Sessions Judge partly allowed the appeal filed by respondent No.1 and modified order dated 11.8.2015 passed by the learned Additional Chief Judicial Magistrate, Pune below Exhibit-5 in Criminal Application No.471/2015. The learned Sessions Judge directed petitioner No.1 herein to pay

interim maintenance to the first respondent @ 5,000/- per month from the date of filing of interim application i.e. 29.1.2015 till the decision of the main application on merits. Petitioner No.1 is also directed to pay Rs.5,000/- per month to the first respondent towards rent for her alternate accommodation from the date of filing of interim application till the decision of main application on merits. The petitioners are temporarily restrained from causing any sort of domestic violence to the first respondent till the decision of main application on merits. The petitioners are also directed to pay Rs.8,000/- towards the cost of interim application.

3. Mr. Hande submitted that the petitioners have paid costs of Rs.8,000/- as ordered by the learned Magistrate as also by the learned Sessions Judge. He submitted that in pursuance of the order dated 17.4.2018, the petitioners have deposited Rs.1,35,000/- in this Court. In support of this Petition, Mr. Hande submitted that the learned Magistrate passed order on 11.8.2015 partly allowing Misc. Application filed by the first respondent. The learned Magistrate rejected the prayer for grant of maintenance @ Rs.35,000/- per month and Rs.10,000/- by way of rent. He invited my attention to paragraph-17 onwards of that order. In paragraph-17, the learned Magistrate noted that the first respondent herself came with the case that she is earning Rs.20,000/-

per month. In paragraph-18, the learned Magistrate noted that petitioner No.1's gross salary is Rs.63,986/- per month and after deductions he is getting Rs.25,239/-. He submitted that respondent No.1 has not substantiated that her expenses are more than Rs.20,000/- per month. Not a single document was produced in that regard. He submitted that as respondent No.1 is earning Rs.20,000/- per month, she does not require any amount of maintenance. Insofar as the order of the Sessions Court is concerned, he has invited my attention to paragraph-9 onwards. He submitted that the learned Sessions Judge was not justified in observing that as the net income of petitioner No.1 is Rs.43,171/-, respondent No.1 is entitled to maintenance @ Rs.5,000/- per month as also monthly rent at Rs.5,000/-. He, therefore, submitted that the Petition requires consideration.

4. Mr. Hande further submitted that the proceedings filed by the first respondent under the Protection of Women from Domestic Violence Act, 2005 have been dismissed by the learned Magistrate on 24.8.2017.

5. On the other hand, Mr. Jadhav supported the impugned order. He invited my attention to the admission of petitioner No.1 during cross-examination in Misc. Application No.471/2015 conducted on 27.6.2017. During the course of cross-examination, petitioner No.1

admitted that since 1989 he is working in Pune Municipal Corporation as Senior Steno-Typist. He is earning Rs.75,000/- per month.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the order passed by the learned Magistrate shows that in paragraph-18, the learned Magistrate considered the gross-salary of petitioner No.1 and the monthly deductions. The learned Magistrate noted that the gross-salary of petitioner No.1 is Rs.63,986/- per month and after deductions his take-away salary is Rs.25,239/-. As against this in paragraph-11, the learned Sessions Judge noted that the gross-salary of petitioner No.1 is Rs.63,986/- and net salary is Rs.43,171/- after deduction of Rs.25,239/- per month. The learned Sessions Judge also noted that petitioner No.1 cannot take advantage of deductions which are voluntary in nature. Thus, after considering the material on record, the learned Sessions Judge ultimately in paragraph-14 noted that as respondent No.1 is staying in the rental premises in a city like Pune by paying monthly rent of Rs.7,000/-, he has directed petitioner No.1 to pay Rs.5,000/- per month as petitioner No.1 did not offer the shared household to the respondent. After considering the income of respondent No.1 and petitioner No.1, the learned Sessions Judge directed petitioner No.1 to

pay Rs.5,000/- per month from the date of filing of interim application i.e. 29.1.2015 till the decision of main application on merit. It has come on record that the main application was dismissed on 24.8.2017. Mr. Jadhav states that aggrieved by that decision, respondent No.1 has preferred appeal before the Sessions Court and the same is pending.

7. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed. Respondent No.1 is permitted to withdraw the amount of Rs.1,35,000/- deposited by the petitioners in this Court unconditionally.

8. All concerned parties to act upon an authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)