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

CRIMINAL WRIT PETITION NO. 1409 OF 2017

Sumit Sapan Goshal	..Petitioner.
V/s.	
Mrs. Sanjukta Ghose & Anr.	..Respondents.

Mr.Adwait Bhonde for the petitioner.

Mr.P.G. Chavan for respondent No.1.

Mrs.M.R.Tidke, APP for the respondent-State.

CORAM: NITIN W.SAMBRE, J.

DATE : APRIL 23, 2018

PC.:-

Heard respective parties.

2. An application, being Criminal Application No.2603/2013, under section 12 of the Protection of Woman from Domestic Violence Act, 2005 ('the D.V. Act' for short) was filed by respondent No.1-wife which was accompanied with an application under section 23 of the D.V. Act for grant of interim relief, which was allowed by the learned Magistrate, Pune *vide* order dated August 1, 2015 ordering payment of interim maintenance of Rs.20,000/- per month to the respondent-wife, which was confirmed by the learned Additional Sessions Judge, Pune *vide* order dated March 9,

2017 passed in Criminal Appeal No.466/2015 filed under section 29 of the D.V. Act. As such, this petition.

3. The learned counsel for the petitioner-husband would make the following submissions :-

(a) The fact that the petitioner had met with an accident and resigned from the company and as such was incapacitated to pay the maintenance is not looked into by both the Court below;

(b) In addition, he would urge that it was well within the knowledge of both the Courts below that the respondent-wife was earning a handsome salary of Rs.50,000/- which is now raised to Rs.88,000/-. As such, the amount of maintenance awarded is liable to be interfered with.

4. The learned counsel for the respondent-wife disputed the factual position as regards the incapacitation of the petitioner because of his accident, on the issue of payment of maintenance as he is no more in service.

5. In the aforesaid background, if the claim of the petitioner is appreciated, there is hardly any material on record to

infer that the petitioner has met with an accident which has resulted into loss of his earning capacity which has prompted him to resign from service.

6. Apart from above, the Courts below were aware of the earning capacity of each of the parties to the proceedings. The learned Magistrate has recorded a finding that the petitioner was earning Rs.20 lakhs per annum. In the aforesaid background, even if it is presumed that the respondent-wife was earning Rs.50,000/-, the award of maintenance of Rs.20,000/- is most reasonable.

7. The findings of both the Courts below and award of interim maintenance are after appreciation of evidence *qua* earnings of each parties. In that view of the matter, no interference is warranted. The writ petition is dismissed.

8. It is clarified that if the maintenance amount is not paid, it is always open for the respondent-wife to initiate appropriate proceedings.

(NITIN W.SAMBRE, J.)