

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.228 OF 2018

Humaira Mohammed Azam and Another ...Applicants

vs.

Mohammad Azam Iqbal Ahmed and Another ...Respondents

Mr. Aslam Khan, for the Applicants.

Ms. Sandhya Nanavare a/w. Mr. Mokal, for Respondent No. 1.

CORAM : M. S. SONAK, J.

DATE : NOVEMBER 22, 2018

ORAL JUDGMENT :

. Heard learned counsel for the parties.

2. In terms of the earlier orders as also, at the request and with the consent of the learned counsel for the parties this Petition is taken up for final disposal.

3. The Applicants i.e. wife and minor daughter have challenged the order dated 1st March, 2018 passed by the Family Court on the ground that interim maintenance awarded in their favour is grossly inadequate. The operative portion of the impugned order reads thus:

“ The Application at Exh-7 is hereby allowed as under:

2. The Respondent shall pay an amount of Rs. 4,000/- p.m.

to the Applicants from the date of application i.e. 13/07/2017 and Rs. 2,000/- p.m. for the daughter from the date of her birth i.e. 12/08/2017 (in all Rs. 6,000/- p.m.) towards their maintenance till disposal of tgeh main Petition.

3. The Respondent shall also pay Rs. 10,000/- to the Applicants towards litigation expenses in lumpsum.

4. The medical expenses during pregnancy and delivery, if pressed, shall be decided with the main Petition.”

4. Mr. Aslam Khan, the learned counsel for the Applicant submits that with great difficulty, the Applicants were able to obtain some documents in relation to the income of the Respondent-husband. On the basis of such documents, it is quite clear that the income of the Respondent is in the range of Rs. 1 lakh per month He submits that the delivery van which was owned and operated by the Respondent was transferred on 18th August, 2017 by him in favour of his sister who is medical practitioner. He submits that such transfer was for the sole purpose of avoiding the liability to pay the maintenance. He submits that the documents on record indicate that Respondent owns a car and also an apartment in the building Gracesquare. He submits that though the documents indicate the name of mother and sister, in fact the car and apartment belong to the Respondent. He submits that the Respondent in his affidavit himself has admitted that his brother is

an Engineer working in U.S.A. and his sister is also a medical practitioner. Mr. Aslam Khan submits that the Respondent except for making a bare statement that he works as a Poultry Sales Assistant and earns Rs. 10,000/- p.m. has not even produced any material to back the same. Mr. Aslam Kahn refers the impugned order made by the Family Court to point out that even the Family Court has taken cognizance of the circumstances that the Respondent shifts stand when it comes to his employment details. In the said order it is recorded that the Respondent had claimed that he was a driver. Mr. Aslam Khan points out that the Applicant-wife is unemployed and belated allegations that she earns some amount by taking coaching classes, is not at all substantiated. He points out that in a place like Mumbai, it is very difficult for the Applicants to survive on mere amount of Rs. 6,000/- p.m. He submits that the learned Family Court has not appreciated all these aspects and consequently maintenance amount warrants enhancement.

5. Ms. Sandhya Nanavare, the learned counsel for the Respondent-husband submits that the learned Family Court in making the impugned order has adverted to all the relevant

parameters which are required to be taken into consideration at the stage of computing interim maintenance. She points out that the documents produced by the Respondent clearly indicate that the Respondent is neither the owner of the apartment nor the owner of two vehicles. She points out that though the income of the Respondent from his services as a Poultry Sales Assistant was only Rs. 10,000/- p.m., the learned Family Court has taken income as Rs. 20,000/- p.m. Ms. Nanavare points out that the delivery vehicle was earlier owned by the Respondent, however, the Respondent had taken the loan from his sister and he was unable to repay the same, therefore the vehicle had to be transferred in the name of his sister. Ms. Nanavare submits that the Respondent is indeed a Poultry Sales Assistant but on some occasions, the driver of the delivery van does not report for duties, the Respondent has to drive such van and it is in that context the statement was made that the Respondent is a driver. She submits that this does not amount to shifting the stands. She submits that all other issues which are now sought to be raised by the Applicants will have to be decided only on the basis of evidence in the course of trial. Since the impugned order has dealt with all the issues relating interim maintenance, there is absolutely no

infirmity in the award of interim maintenance, though it is the case of the Respondent that in fact no maintenance is payable to the Applicants. For all these reasons Ms. Nanaware submits that this Petition may be dismissed.

6. Mr. Aslam Khan, learned counsel for the Applicants adverted one more issue concerning medical expenses. He submits that, earlier amount of Rs. 10,000/- p.m. was awarded towards medical expenses. However, in the impugned order this amount, has been directed to be adjusted against the amount of interim maintenance awarded. He pointed out that the bills were furnished by the Applicants to the effect that the sum of Rs. 22,000/- expended. These bills were never challenged. Yet the Family Court has made no award towards such medical/other expenses. Mr. Aslam Kahn submits that this is also an error apparent on the face of record which warrants correction.

7. Ms. Nanaware points out that the amount of Rs. 10,000/- has already been paid by the Respondent to the Applicants towards medical expenses. She further point out that the Family Court correctly ordered adjustment in the

circumstances of the present case. Besides, she point out that the additional amount of Rs. 10,000/- awarded towards the litigation costs. She, therefore, submits that there is absolutely no case to warrant interference with the impugned order.

8. The rival contentions now fall for determination.

9. As correctly contended by Ms. Nanaware, the scope of proceeding for determination of interim maintenance is quite limited. At this stage, the Family Court has to consider whether maintenance is indeed due and payable to the Applicants and thereafter focus on the income of spouse from whom the maintenance is claimed as also the needs of the Applicants. At this stage, a very detailed determination is really not contemplated. These matters have to be decided on the basis of material which the parties may have produced on record, as also certain inferences which are required to be drawn from the material on record, as well as conduct of the parties. The legality and validity of the impugned order will therefore have to be examined from this perspective.

10. In the present case, there is no doubt that the Applicants i.e. wife and minor daughter aged one year are entitled to some maintenance. Before the learned Family Court it was not even the case of the Respondent that the Applicant-wife was employed. Only before this Court, some affidavit has been filed to suggest that the Applicant takes up coaching classes and therefore has some income. Again the Respondent has not substantiated this allegation even otherwise taking into consideration the meager amount of interim maintenance awarded to the Applicant, assuming that the Respondent, takes up some coaching classes, in order to make ends meet, that is certainly not a reason to deprive her of any interim maintenance in the peculiar facts and circumstances of the present case. Ultimately it must be remembered that even the Applicants have to survive and if, the Applicant-wife makes some efforts to earn some money by way of coaching classes, surely that cannot be any disqualification for the Applicant to receive some proper interim maintenance.

11. In so far as the income of the Respondent is concerned, though the Respondent chose to file a very lengthy affidavit praising his own family background, the Respondent does not

appear to be candid with the Court. In so far as his educational qualification and details of his employment and his income are concerned. The Respondent has chosen to make a bare statement that he works as Sales Assistant in a poultry farm and earns Rs. 10,000/- p.m. out of which he contributes an amount of Rs. 5,000/- p.m. to support his mother. Such statement appears to be *ex facie* false. In the same affidavit, the Respondent has stated that his brother is an Engineer who works in U.S.A. and his sister is a medical practitioner. The learned counsel interrupts the dictation to state that the sister is married. Nevertheless if this is the position, it is difficult to believe that the Respondent out of his meager income of Rs. 10,000/- p.m. makes contribution of Rs. 5,000/- p.m. to his mother.

12. The record also indicates that the Respondent was the owner of a delivery van. This delivery van was transferred by the Respondent in the name of his sister Dr. Sana Shaikh only in August, 2017. It is pertinent to note that the Applicants filed their application for maintenance in July, 2017. The explanation offered by the Respondent that he has taken some loan from the sister and since he could not repay the loan, the delivery van has been

transferred. This explanation *prima facie* is too simplistic to deserve any acceptance. The Respondent has furnished no details whatsoever with regard to such loan which he allegedly obtained from his sister. Besides, since his sister is a medical practitioner, it defies logic that the sister accepts the van and puts this delivery van to some use. Therefore, *prima facie* there is merit in the submissions of Mr. Aslam Khan that the transfer was for the purpose of avoiding payment of proper interim maintenance.

13. From the particulars of the vehicle furnished, it appears that this vehicle was a delivery van for supply of poultry and poultry products. As per the contention of the learned counsel for the Respondent, on some occasions when the driver of the delivery van does not report, the Respondent drives the delivery van. All this *prima facie* suggests that the Respondent was himself carrying on his business of poultry products or at least he has substantial stake in the business of sales of poultry products and was not just employee earning Rs. 10,000/- p.m. as claimed by him. This is in fact the case pleaded by the Applicant.

14. At this stage, it is not necessary to look into the issue of

other vehicle or apartment because there is no sufficient material to make any inferences in that regard. However, from the material on record it is clear that Respondent has not at all been candid to the Court in the matter of disclosure of his correct employment details and correct income.

15. The learned Family Court failed to look into the documents on record in the correct perspective. Learned Family Court failed to draw correct inferences even on *prima facie* basis from the material on record. There also appears some merit in the contention of Mr. Aslam Khan that the Respondent has shifted stands when it comes to his employment details or his correct income. From the replies filed by the Respondent on record also it is apparent that the Respondent is bent upon hiding facts from the Court.

16. From the material on record, it is reasonable to award interim maintenance, of Rs. 6,500/- p.m. to the Applicant-wife and Rs. 3,500/- p.m. to the minor daughter. Such award will be justified even if the income amount of Rs. 20,000/- p.m. as held by the learned Family Court is to be accepted. The material on record

in fact suggest that the income of the Respondent is substantially higher than Rs. 20,000/-. However, if the Respondent's income is taken as Rs. 20,000/- p.m. particularly since such quantum has not even been challenged by the Respondent, even then, it is only appropriate that the Applicants and her daughter get at least Rs.10,000/- by way of interim maintenance.

17. The Respondent on affidavit has stated that he earns Rs. 10,000/- per month out of which he contributes Rs. 5,000/- towards his mother. This means that the Respondent claims that he can survive on Rs.5000/- per month. In terms of the impugned order even after the modification now made, the Respondent will now have Rs. 10,000/- p.m. for his subsistence.

18. There is also no justification to order the adjustment of medical expenses as has been done in the impugned order. No doubt, the Respondent did pay an amount of Rs. 10,000/- to the Applicants towards medical/delivery expenses. However, the same was subject to production of medical bills. The medical bills were produced on record by the Applicants which shows expenses of Rs.22,000/-. The bills were never challenged. The amount reflected

in the bills is also most reasonable. The Family Court, therefore, should have awarded this amount in favour of the Applicants without requiring any adjustment. The amount of Rs. 10,000/- awarded by the Family Court is towards litigation expenses which is separate and distinct head from medical expenses. To that extent also there is clear error in the impugned order which warrants correction.

19. For the aforesaid reasons, the impugned order requires modification.

20. Accordingly the Petition is disposed of with the following order:

(a) The impugned order is modified and the Respondent is directed to pay interim maintenance @ Rs. 6,500/- p.m. to the Applicant No. 1- wife and Rs. 3,500/- p.m. to Applicant No. 2 – minor daughter with effect from the date indicated in the impugned order.

(b) In addition the Respondent is directed to pay further amount of Rs. 22,707/- towards medical/delivery expenses. This is taking into consideration the amount of Rs.10,000/- already paid by the

Respondent. This amount shall not be liable for any adjustment as directed in the impugned order.

(c) The arrears in terms of this order to be cleared within period of eight weeks from today.

(d) In addition, the Respondent to pay cost of Rs. 5,000/- to the Applicants within period of eight weeks from today.

(e) The Family Court is directed to ensure that all such payments are regularly made by the Respondent, and if not, to take appropriate action, as permissible under the law.

(f) It is clarified that observations in the impugned order or for that matter the observations in the present order are *prima facie* and for the purpose of determination the interim maintenance. Therefore such observations shall not be relied upon while determining the final maintenance amount.

(g) All contention of all parties are left open to be determined by the Family Court at the final stage.

21. Rule is made absolute to the aforesaid extent.

22. All concerned to act on the authenticated copy of this order.

(M. S. SONAK, J.)