

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.285 OF 2014

Amrut Dwarkanath Patil

.. Applicant

Versus

1. Laxmi Amrul Patil & Anr.

.. Respondents

Mr.Omkar Nagvekar i/b Prabha Badadare, Advocate for the applicant.

Mr.Saurabh Oka, Advocate for the Respondent No.1.

Ms.R.M.Gadhvi, APP for the Respondent State.

CORAM : PRAKASH D. NAIK, J.

DATED : 13th FEBRUARY 2018

P.C. :

1. The applicant has challenged the order dated 18th July 2014 passed by the learned Additional Sessions Judge, Thane in Criminal Appeal No.78 of 2012.

2. The respondent No.1 is the wife of the applicant. She had filed proceedings under the Domestic Violence Act before the Court of the learned Judicial Magistrate, First Class, 5th Court, Bhiwandi. The Trial Court vide judgment and order dated 10th April 2012, allowed the application preferred by the respondent No.1 and restrained the respondents in the said application from indulging in domestic violence. The Court also granted reliefs in

respect to the residence and directed the applicant to pay maintenance of Rs.2,500/- per month to the respondent No.1.

3. Being aggrieved by the quantum of maintenance, the respondent No.1 preferred an appeal viz. Criminal Appeal No.78 of 2012 and sought enhancement of the maintenance amount. The learned Additional Sessions Judge vide order dated 18th July 2014 set aside the order of maintenance @ Rs.2,500/- per month and directed the applicant to pay monthly maintenance of Rs.7,000/- to the respondent No.1 from the date of appeal.

4. The learned Advocate for the applicant submits that the applicant has shown his bonafides by complying the order of the Appellate Court. It is submitted that the learned Magistrate had granted maintenance to the tune of Rs.2,500/- per month after taking into consideration the evidence on record and there was no reason to enhance the same. It is submitted that the learned Magistrate had granted maintenance to the tune of Rs.2,500/- per month after taking into consideration the evidence on record and there was no reason to enhance the same. It is submitted that the Appellate Court has observed that the revision applicant is having income of about Rs.20,000/- per month after all deductions/expenditure in operating his Drazzer/vessel. However, there is no evidence before the Court to arrive at such a conclusion. It is submitted that the applicant has no source of income. He is unemployed. It is submitted that the increase in quantum of maintenance is not supported by any cogent evidence. It is thus submitted that, the order passed by the Sessions Court be set aside.

5. The learned Counsel for the respondent No.1 opposed the grant of any relief to the applicant. The respondent No.1 has also tendered reply opposing this application. In the reply, the respondent No.1 has denied the contentions of the applicant. It is submitted that the Appellate Court has assigned reasons for enhancing the maintenance and no interference is called for in the impugned order. The income of the applicant is much more than Rs.20,000/- as calculated by the Appellate Court. It is also submitted that the respondent No.1 is suffering from various ailments and she is required to incur expenses for medical treatment. Reliance is also placed on the medical bills, which are annexed to the reply. It is thus submitted that the application preferred by the applicant may be rejected.

6. On going through the documents, it is apparent that the Trial Court had granted maintenance of Rs.2,500/- per month to the respondent No.1. The said order was passed on 10th April 2012. The applicant had not challenged the said order. The applicant is also complying the order passed by the Appellate Court by paying the maintenance as directed by the said Court. The Appellate Court while allowing the appeal has observed that the documentary evidence vide Exhibits 75 to 80 relate to the effect that one Boitur Patil was the owner of drazzer and he was permitted to extract sand from the Uttan Creek. The permit is issued in the name of the applicant for extracting sand from creek by drazzer and the Khadi Pass issued by the Custom Officer shows that the vessel belongs to the applicant and that the same is used by him for extracting sand from Kevni Port. Besides the aforesaid documentary evidence, from the deposition of PW No.4 coupled

with his account extract maintained by the Patsanstha reveals that the applicant has four accounts in the financial institute wherein he has deposited the amount and withdrawn the same. In addition, he has Fixed Deposit of Rs.1,50,000/- with interest, which was withdrawn on 28th December 2010. It was also observed that the documentary evidence placed on record has falsified the defence of the applicant/husband that he had a meager income and no sufficient means to pay maintenance to his wife. The Court thereby concluded that there is sufficient evidence to show that the applicant/husband is capable of maintaining his wife. The Court also considered the fact that the applicant had not provided proper medical treatment to his wife. After analysing the evidence on record, the Appellate Court has given finding that the wife is justified in claiming the enhancement of maintenance and, therefore, the Court directed the applicant to pay monthly maintenance of Rs.7,000/- inclusive of previous maintenance of Rs.2,500/-. I do not find any reason to take a different view in the light of the evidence on record and the reasons assigned by the Appellate Court. No case is made out for grant of any relief in this application. Hence, I pass the following order.

: ORDER :

(i) Criminal Revision Application No.285 of 2014 stands rejected.

(PRAKASH D. NAIK, J.)