

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3481 OF 2013

Sou.Sunanda Dattatraya Pekhale

.. Petitioner

vs

1. Dattatray Yeshwant Pekhale

2. State of Maharashtra

.. Respondents

Ms.Pranita Hingmine I.b Mr.S.M.Sabrad for Petitioner

Ms.Khushbu Manwali I/b Jay & Co.for Respondents

Coram : M.S.SONAK, J

Date : 20TH DECEMBER, 2018

P.C

Heard Advocate Ms.Pranita for the petitioner and  
Ms.Khusbu for the respondent.

2. The challenge in this petition is to the order dated  
21.2.2012 made by the Additional Sessions Judge, Niphad. The  
operative portion of the impugned order reads thus :

“The revision Application No.11/2010 is hereby allowed partly with costs.

The revision Application No.15/2010 therefore stands rejected.

The order passed by the learned Magistrate in Criminal Misc.Application  
No.140/2008 is modified as follows:

The petitioner husband is now directed to pay amount of Rs.5000/- per month to the petitioner wife towards her maintenance from the date of this order.

At the same time, petitioner husband is expected to deposit or pay the maintenance amount up till today at the rate awarded by the learned Magistrate.

Cost of this judgement be kept in the file of Criminal Revision Application No.15 of 2010.

Inform to the learned Magistrate accordingly.

S/d  
(H.S.Mahajan)  
Additional Sessions Judge, Niphad

3. The petitioner-wife had applied for maintenance vide Criminal Application No.140 of 2008. The learned Judicial Magistrate, First Class, Pimpalgaon (Trial Court) vide judgement and order dated 28.1.2010 awarded maintenance of Rs.3000/- to the petitioner. Aggrieved, both the petitioner-wife and as well as the respondent-husband instituted Criminal Revision Application nos.11 of 2010 and 15 of 2010 before the Additional Sessions Judge, at Niphad. By a judgement dated 21.2.2012 the Revision Application instituted by the respondent-husband came to be dismissed and the Revision Application instituted by the petitioner-wife bearing No.11 of 2010 came to be partly allowed. The amount of maintenance was enhanced from Rs.3000/- to Rs.5000/- from the date of the impugned order 21.2.2012.

4. Ms.Pranita learned counsel for the petitioner-wife submits that the present income of the respondent who is a Professor at K.G.D.H.Arts, Commerce & Science College, is over Rs.1,67,000/-. She submits that out of this, there are deductions to the extent of Rs.1,46,618/- because the respondent-husband has taken huge loans in order to defeat the petitioner's right to claim maintenance. She submits that even in accordance with the salary certificate which was produced before the trial Court and the revisional Court, for the month of October 2009 the respondent's gross salary was Rs.42,532/- per month. She submits that the petitioner stays in a rented premises and has no substantial income of her own. She submits that when the application for maintenance amount was made, she had to look after one son then aged 20 years. She therefore, submits that the maintenance amount of Rs.5000/- per month was too meagre and the Court ought to have awarded maintenance at least at Rs. 20,000/- per month as prayed for, and that too from the date of the application i.e. 8.3.2010.

5. Ms.Khusbu learned counsel for the respondent-husband pointed out that the petitioner is due to retire from February 2019. She points out that loans were taken bonafide and the respondent is required to repay them. She pointed out that the respondent gets hardly Rs.27,000/- per month by way of net salary. She points out that the respondent has several other liabilities. She submits that the petitioner's son now has a steady job and a substantial income. She further submits that the petitioner herself, has put up a shop which deals with ready made garments and has a income of Rs.40,000/- to Rs.50,000/- per month. She submits that for all these reasons, the petition may be dismissed. She further submits that as on the date, when the impugned order was made, the net income of the respondent-husband was hardly Rs.19,508/- per month. Taking the same into consideration the maintenance of Rs.5000/- per month cannot be said to be meagre. For all these reasons, Ms.Khusbu submits that the petition may be dismissed.

6. **The rival contentions now fall for determination.**

7. The rival contentions that in November 2017 the salary of the respondent-husband is Rs.1,67,000/- or thereabout per month and that the petitioner is earning Rs.40,000/- to Rs.50,000/- per month, cannot be taken into consideration in the present petition.

8. In the present petition, we are only concerned with the legality and validity of the impugned order dated 21.2.2012 made to dispose of the petitioner's application dated 8.3.2010 for maintenance. In so far as these subsequent developments are concerned, it is always open to the parties to apply for variation before the trial Court and if applications are made, there is no doubt that the same will be considered in accordance with law and on their own merits.

9. The crucial issue in the present case is whether on the basis of the petitioner's application dated 8.3.2010 she was entitled to maintenance of Rs.20,000/- per month, as prayed for by her, or whether the maintenance of Rs.5000/- per month as awarded to her

by the impugned order dated 21.2.2012 suffices.

10. The record indicates that in terms of the salary certificate of the respondent-husband for the month of October 2018 his salary was Rs.42,532/- per month. Thereafter, there were several deductions towards provident fund, LIC, MVP professional tax etc resulting in the respondent receiving a net salary to the tune of Rs.19,508/- per month.

11. In so far as most of the deductions are concerned towards Provident Fund, LIC, Income Tax etc the same are quite understandable. However, there is a chunk of deductions towards MVP society. Learned counsel for the respondent explains that these deductions are towards repayment of the loans obtained by the respondent-husband. The respondent-husband has not explained the purpose for which the loan was obtained. Therefore, merely on the basis that the respondent-husband has obtained loan and a considerable portion of his salary goes towards re-payment of the

loan, cannot become the sole consideration for denying the petitioner's claim for maintenance which is otherwise, due in the facts and circumstances of the case.

12. The revisional Court has observed that if the respondent-husband has availed loans for living in luxury, then the petitioner-wife cannot be made to suffer for this reason. Despite the aforesaid observations, the revisional Court has awarded maintenance for only Rs.5000/- per month to the petitioner.

13. Even if the deductions to the MVP society were to be discounted by half, the net salary of the respondent-husband would be higher than Rs.25,000/- per month or thereabouts. In these circumstances, the petitioner-wife ought to have been awarded maintenance amount at the rate of Rs.10,000/- per month instead of Rs.5000/- per month.

14. Besides, the revisional Court has not indicated any

reason as to why award for maintenance is made only from the date of the order i.e. 21.2.2012 and not from the date of the application dated 8.3.2010. In the absence of any special reasons, normal rule is that the maintenance amount should be awarded from the date of the application.

15. Accordingly, the impugned order is required to be modified and is hereby modified. The maintenance amount is enhanced to Rs.10,000/- per month from of Rs.5000/- p.m. Further, this maintenance amount is required to be paid from the date of the application which is 8.3.2010. The impugned order dated 21.2.2012 stands modified accordingly.

16. Rule is partly made absolute to the aforesaid extent. The parties are granted liberty to apply for variation before the trial Court on the basis of subsequent developments. If such an application for variation of the amount is taken out by any of the parties, then the same shall be considered and disposed of on its own

merits and in accordance with law.

17. The respondent-husband is directed to clear the arrears of maintenance amount in terms of the present order on or before 31.1.2019.

18. In case the respondent-husband wants some additional time, so as to clear the arrears from out of the retiral benefits, the respondent-husband is at liberty to make an application before the trial Court which shall consider such an application and decide the same after giving an opportunity of hearing to the petitioner.

19. All concerned to act on an authenticated copy of this order.

(M.S.SONAK,J)