

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1061 OF 2015

Anjum Anwarbhai Kukad ..Applicant.

V/s.

Smt. Gulzeba Anjum Kukad ..Respondent.

Ms.Pinaz Contractor for the applicant.

None for respondent No.1.

Mr.PH. Gaikwad, APP for the respondent- State.

CORAM: NITIN W.SAMBRE, J.

DATE : APRIL 26, 2018

PC.:-

Heard learned counsel for the applicant. Pursuant to the provisions of section 12 of the Protection of Women from Domestic Violence, 2005 ('the D.V. Act' for short), the respondent-wife has filed an Misc. Application No.2900079/DV/2014 on the file of Metropolitan Magistrate, 29th Court, Dadar, Mumbai seeking relief of interim maintenance under section 23 of the D.V. Act, which came to be allowed on December 24, 2014 whereby the

present applicant-husband was directed to pay maintenance of Rs.25,000/- per month to the respondent. The appeal against the said order under section 29 of the D.V.Act before the learned Additional Sessions Judge, Greater Mumbai was dismissed vide judgment and order dated July 9, 2015 in Criminal Appeal No.63/2015. Hence this application.

2. The efforts for settlement made by mediator pursuant to the order of this Court have not materialised. As such the revision is heard on merits.

3. It is the case of the applicant-husband that the marriage between the parties was settled out of friendship and thereafter they resided in Mumbai. The applicant-husband was having service in the State of Gujarat and as such he shifted to Gujarat and request was made to the respondent-wife to accompany him to which she refused. As a consequence of matrimonial discord, a registered deed of divorce was recorded between the parties and the same was communicated to the respondent-wife in regard to which till date no dispute is raised by the respondent-wife. According to the applicant, in reply to the

non-applicant's application under section 23 of the D.V. Act for grant of interim maintenance, the applicant-husband was unable to produce the documents substantiating his income, so also reply on his behalf was signed by his lawyer and, therefore, a great prejudice is caused to the applicant-husband. According to the applicant, neither complete opportunity to present his case properly nor evidence was produced for want of proper legal guidance and advice.

4. The learned counsel would then urge that the amount of maintenance awarded is disproportionate to the known source of income of the applicant. She would urge that efforts on the part of the applicant to reunite was turned down and the respondent-wife is also gainfully employed as she is diploma holder in fashion designing. The learned counsel for the applicant would then urge that the aggressive approach of the respondent-wife could be inferred from her conduct of creating dispute with the earlier landlord in respect to the premises where they were residing together. Lodging of an offence against the non-applicant in the State of Gujarat having assailed the applicant and his friends is also required to be appreciated. She would also invite attention of

this Court to the pendency of prosecution under section 498A of the Indian Penal Code.

5. In the aforesaid background, a submission is made that the matter needs to be remanded to the learned Magistrate with directions to grant opportunity of fresh hearing and production of evidence to the applicant-husband.

6. Non appears for the respondent-wife.

7. Considered the submission.

8. The learned Magistrate vide impugned order passed on December 24, 2014 ordered payment of maintenance of Rs.25,000/- per month from July 17, 2014 till the date of final adjudication of the petition.

9. While doing so, the facts which prevailed before the Court were, the applicant-husband was claiming to be a businessmen. Though the Magistrate has not recorded any finding on the income of the applicant-husband, however, in appeal, so also before this Court, the applicant is claiming to produce documentary evidence so as to infer the income of the applicant. The learned Appellate Court while appreciating the claim put forth by the present applicant-husband has in categorical terms

appreciated his statement that he is a businessmen. Other mitigating circumstances which prevailed before the Appellate Court while awarding the maintenance of Rs.25,000/- was the standard of living of the respondent-wife after marriage and the places where she resided.

10. Though the applicant at this stage has produced a salary certificate showing that he received stipend of Rs.10,000/- per month dated December 3, 2014. However, such document cannot be appreciated in isolation, particularly when the applicant -husband has not produced the copies of bank account, income tax returns, etc.

11. That being so, I hardly notice any cause which warrants interference at this stage of the proceedings as no error of jurisdiction is noticed.

12. As such, the revision fails and is dismissed.

13. However, this will not preclude the applicant from producing on record the documentary and oral evidence so as to substantiate his claim about the source of his income.

14. The observations made hereinabove are *prima facie* in nature and it need not be taken into account while dealing with

the claim of the applicant-husband at the stage of final hearing of complaint.

15. In case any fresh evidence is discovered, liberty to the applicant to approach the Court of Magistrate for modification of the order impugned.

16. In view of the dismissal of the revision, no order is required in the application, if any.

(NITIN W.SAMBRE, J.)