

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3685 OF 2013

Mrs. Farhad Jabeen Mulla & Anr. ... Petitioners
VS.
Najamus Sahar M. Mulla & Ors. ... Respondents

WITH
WRIT PETITION NO. 4085 OF 2013

Najamus Sahar M. Mulla & Ors. ... Petitioners
VS.
Farhad Jabeen Mulla & Anr. ... Respondents

Mr. Sanjay Bhujwani I/b. S.B. Law Associates, Advocate for the petitioners in WP/3685/2013.

Mr. Nilesh Suresh Patil, Advocate for the petitioner in WP/4085/2013.

Mr. Yogesh Dabke, APP for the respondent/State.

Mr. Muhammad M. Mulla, respondent no. 3 present in person.

CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 27th November, 2018

P.C. :

These two Writ Petitions are filed against each other by the husband and wife. Writ Petition No. 3685 of 2013 is filed by the wife and Writ Petition No. 4085 of 2013 is filed by the husband against the order of interim maintenance.

2. The wife has filed Miscellaneous Application No. 45 of 2012 under the Domestic Violence Act for maintenance of herself and for their minor son. In the said Application, interim order was passed by the learned Judicial Magistrate First Class, Cantonment Camp, Pune on 14th December, 2012 by which the respondent no. 1/husband was directed to pay Rs.15,000/- p.m. as maintenance to applicant no. 1/wife and Rs.7,500/- p.m. to applicant no. 2/minor son from the date of the Application. Respondent no. 1/husband shall also provide rental accommodation upto amount of Rs.7,500/- within 30 days of the order and other preventing orders were passed. All the respondents, i.e., husband, in-laws, brother-in-law have challenged the order in Criminal Appeal No. 28 of 2013 and the said Appeal was partly allowed by the order dated 31st August, 2013 passed by the learned Additional Sessions Judge, Pune. By the said order, the learned Additional Sessions Judge cancelled the order of payment of monthly rent of Rs,7,500/- passed against respondent no. 1. The learned Judge reduced the amount of maintenance from Rs.15,000/- to Rs.8,000/- per month from the date of original application, however, the order of payment of

maintenance of Rs.7,500/- to original applicant no. 2/minor son was not disturbed. Being aggrieved by the said order, the original applicant nos. 1 and 2, I.e, wife and minor son, have filed the Writ Petition.

3. The learned counsel for the wife has submitted that the learned Additional Sessions Judge has committed error of law in appreciating evidence while partly allowing the Appeal. He has submitted that the wife was compelled to leave the house of the husband and the husband has performed second marriage. He further submitted that Flat Nos. 128 and 128A constitute one tenement, which stands in the joint name of wife and her mother. He further submitted that at present, wife is staying in the rented house, which is convenient to her and her son. This fact ought to have been taken into account by the learned Additional Sessions Judge. He further submitted that the wife has filed an Application for maintenance in divorce proceedings. In the said Application, the Family Court has granted interim maintenance of Rs.7,000/- with bifurcation of Rs.4000/- to wife and Rs.3,000/- to minor son. The

learned Sessions Judge has wrongly held that the learned Judicial Magistrate First Class has not taken into account the grant of interim maintenance of Rs.7,000/- in the divorce matter. In fact, the learned Judicial Magistrate First Class has taken into account the said amount of maintenance and has granted interim maintenance of Rs.15,000/- to the wife. The learned Sessions Judge has reduced the maintenance exactly by Rs.7,000/- which she was getting towards the interim maintenance in the divorce proceedings. He has further submitted that though the petitioner/wife is a working woman and earning, she has to spend money for the education of her son. Respondent no. 1/husband was earning salary of Rs.25,000/- and the petitioner/wife was earning Rs.25,658/- per month at the time of hearing of Appeal. He has further submitted that subsequent development is also to be taken into account by this Court that the decree of divorce is granted by the Family Court and therefore, the order of interim maintenance of Rs.7,000/- which was earlier granted during the pendency of Divorce Petition is now not in force, as the amount of iddat is awarded. He further argued that thereafter the complainant/wife again moved under Domestic

Violence proceedings and prayed for increase in maintenance of Rs.7,000/- as it was granted by the Family Court. The learned Judge has granted amount of Rs.5,000/- more and the said order is not challenged by the respondent/husband. He submitted that the order passed by the learned Judicial Magistrate First Class is to be restored.

4. Per contra, the learned counsel for the husband has argued that the husband has lost the job due to lay off and is now unemployed. He has to shoulder the responsibility of his old parents and his wife. It is not possible for him to pay such a huge amount to the first wife. He has further submitted that as on today, the complainant/wife is earning salary of Rs.60,000/- approximately and that is admitted in the cross-examination by the complainant/wife in the D.V. proceedings. He has further showed the agreement of flat purchased by the complainant/wife and her mother. He has submitted that though the complainant is the owner of the said flat and she is staying with her parents, her statement that she is occupying a rental house is per se false. He has submitted that the

Agreement of Leave and Licence is fake and therefore the Sessions Court has rightly cancelled the amount of rent of Rs.7,500/- The learned counsel has further submitted that the complainant/wife can stay with her parents and her father is a retired army officer.

5. Respondent no. 3-father-in-law, who appeared party in person, has submitted that the complainant/wife has put up incorrect and false case before the Court. She is capable of earning money and maintain herself. She has failed in her duty as a wife and as a daughter-in-law and has no right to get any maintenance. He has adopted the arguments of the learned counsel. The learned counsel for the respondent produced the reading of electricity meter of the rented premises and pointed out that the meter does not show consumption of electricity units.

6. It is to be noted that the order under challenge is passed on 31st August, 2013 and the interim order was passed on 14th December, 2012. The Application under D.V. proceedings is pending since 2012. Now as per the submissions of learned

counsel of both the sides, the complainant/wife is under the cross-examination. Some admissions in respect of earning capacity of the complainant/wife are sought.

7. As the evidence has started, this Court does not want to make specific observations in respect of the conduct of the parties and the earning of the parties which may influence the mind of the trial Judge. The documents like conveyance of the flat purchased by the wife or leave and licence Agreement executed by the wife for rented premises, so also the reading of consumption of electricity meter of the rented premises etc. all these documents and other documents can be put to the witness in the cross-examination or they can be produced in the chief as per the requirement of the Evidence Act. The order passed by the trial Court and the Sessions Court is a order of interim maintenance. The wife was initially employed and subsequently she has stopped working because of the responsibility of minor son. The son is staying with her and he is a school going boy. Though it is accepted that today she is drawing salary of Rs.60,000/- approximately, the Judicial Magistrate First Class, after

considering the oral and documentary evidence to pass final order. Hence, this Court restrain of making further observations.

8. It is made clear that flat which is taken on leave and licence, this fact is to be proved by the complainant/wife with adequate evidence. It cannot be said that the complainant/wife after leaving the house of the husband should stay with her parents. She can have a separate house, for which some portion of the rent is undoubtedly to be shared by the husband. However, in view of the contentions raised by the respondent/husband, if husband is successful in showing that the said premises was not used for residence for few months, then the amount of rent which is granted earlier or as this Court is going to grant, will be adjusted towards the amount of final maintenance.

9. It is made clear that the order passed by this Court shall not come in the way of appreciation of evidence by the learned Judicial Magistrate First Class, who shall independently appreciate the evidence tendered by the parties and decide it in accordance with law. The learned Judicial Magistrate First Class, in his interim order,

has mentioned that the husband owns huge immovable property, however, it is not made clear whether husband is drawing monthly/yearly income out of this property.

10. Hence, following order is passed:

- (i) Both the Petitions are partly allowed;
- (ii) The order of amount of Rs.8,000/- to wife is increased upto Rs.12,000/- per month towards the interim maintenance;
- (iii) The amount of Rs.7,500/- to minor son passed by the learned Judicial Magistrate First Class is not disturbed;
- (iv) The amount of rent of Rs.7,500/- is reduced to Rs.6,000/- from the date of filing of this Writ Petition;
- (v) These amounts are to be paid from the filing of the Application and is subject to the final order.

(MRIDULA BHATKAR, J.)