

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.4021 of 2016

Akshaya Navnitlal Shah .. Petitioner
Versus
Bharati Akshaya Shah & Anr .. Respondents

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Mr.Akshay R. Kapadia for the petitioner.
Ms.Vandana M. Tiwari for respondent no.1.

CORAM: SMT.BHARATI H. DANGRE, J
DATED : 4th APRIL 2018

P.C:-

1 The present Writ Petition is filed by the petitioner husband assailing the order passed by the Addl.Sessions Judge, Borivali Division, Dindoshi, Mumbai dated 19th October 2016, thereby modifying the order passed by the Chief Metropolitan Magistrate, 22nd Court, Andheri, Mumbai, and reducing the amount of maintenance from Rs.40,000/- to Rs.30,000/- per month to be paid to the respondent wife from the date of filing of the petition.

2 Learned counsel for the petitioner would invite attention of this Court to the order sheet which has been placed on record and after taking this Court through the various dates noted in the roznama and the stages for which the matter was fixed, the submission of the learned counsel is that the applicant wife had not filed an application for grant of interim maintenance and she

had filed the proceedings for Domestic Violence. However, on 5th August 2015, the application came to be filed by the wife seeking permission to file documents in support of her interim application for the first time. It is not even disputed by the learned counsel for the respondent that on this date, the documents relating to the employment of the petitioner husband with CCI Logistics Ltd as General Manager, Finance and Compliances, were tendered before the Court. The roznama reveals that, thereafter, on 5th September 2015 and 28th September 2015, the respondent was absent and thus, he did not get any opportunity to deal with the said documents. The Court below passed an order on 9th October 2015, granting interim maintenance to the tune of Rs.40,000/-.

3 Learned counsel for the petitioner make a categorical statement that he was working with CCI Logistics Ltd, on his retirement from his earlier employment which was with Betul Oil Ltd. But served CCI Logistics only for a period of approximately 4 to 5 months. It is also the case of the respondent wife that the husband served with CCI Logistics for a limited period, and after 4 to 5 months, some dispute arose, resultantly, he quit the said job. It is to be noted that the present petitioner is aged 60 years and the respondent is aged 58 years. They are residing at present in the same premises. Their two children who have grown up and are Chartered Accountants, and are leading their own independent life and they owe no responsibility to maintain either the petitioner or the respondent. It is the specific case of respondent wife that the husband is a Chartered Accountant and he is engaged into a freelancing in the Chartered Accountancy field, and he is earning sufficiently. However, these facts were not

either before the Chief Metropolitan Magistrate when it passed the order for the first time on 9th October 2015, nor these facts were before the Addl. Sessions Judge when an order came to be passed on 19th October 2016 thereby reducing the amount of maintenance by Rs.10,000/-. In the year 2018, there is a change in circumstances, and according to the petitioner husband, he is not working with the CCI Logistics and he is engaged into an activity which earns him a bare minimum income which is not even sufficient to maintain himself. Whereas the specific case of the respondent wife that he is earning a sufficient income, and in any case, after putting more than 30 years in a marriage, she deserves maintenance so that she lives a dignified life. The controversy would be, however, as to the quantum of maintenance and on no occasion the Court dealt with the issue, the present scenario i.e. husband being engaged in a freelancing Chartered Accountancy, was not before the Court and ultimately, the quantum of maintenance can be decided by the Court only on consideration of the relevant material being brought on record both by the petitioner and husband.

In such circumstances, in the interest of justice, it would be appropriate if the matter is remanded by the Chief Metropolitan Magistrate, Andheri, Mumbai, so as to enable the petitioner as well as the respondent to stake their respective claims. It is, however, made clear that till the time the matter is reconsidered by the Chief Metropolitan Magistrate, the petitioner would continue to abide by the order passed by the Addl. Sessions Judge, Bombay dated 19th October 2016 and continue to make payment of Rs.30,000/- per month to the respondent wife.

The parties are at loggerhead about the amount of maintenance that has been paid till date, as according to the petitioner, the specific stand is that he has cleared the arrears of maintenance till May 2018, whereas it is the specific case of the respondent wife that till date, she has received an amount of approximately Rs.11,00,000/- (Rupees Eleven lakhs), and the amount in terms of order of the Court is still due. In such circumstances, parties are relegated to the Court of the Chief Judicial Magistrate to present their accounts as to what is the amount that has been paid and received by the respondent wife, and the Court would then take into consideration and adjust the said amount before taking a final call on reconsideration of the matter afresh by affording appropriate opportunity to both the parties.

5 The Chief Metropolitan Magistrate, Andheri Mumbai, is directed to decide Application for interim maintenance within a period of four months from today.

Writ Petition is disposed of accordingly.

(BHARATI H. DANGRE, J)