

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4966 OF 2014

Catherine Edward Anthony ...Petitioner
vs.
Edward Samping Anthony and Anr. ...Respondents
Mr. R.D. Suryawanshi, for the Petitioner.

CORAM : M. S. SONAK, J.

DATE : DECEMBER 14, 2018

JUDGMENT :

. Heard Mr. Suryawanshi, learned counsel for the
Petitioner.

2. On 9th February, 2015 this Court made the following
order:

. Heard Mr. Suryawanshi, learned Counsel for the
petitioner and Mr. Patil, learned APP for respondent
No.2-State.

2. By this Petition under Article 227 of the
Constitution of India, the petitioner-wife has
challenged the judgment and order dated 28.11.2013
passed by the learned Metropolitan Magistrate, 22nd
Court, Andheri in an application for interim
maintenance under Section 23(2) of the Protection of
Women from Domestic Violence Act, 2005 (for short
'Act') as also the judgment and order dated 19.11.2014
passed by the learned Additional Sessions Judge,

Greater Bombay in Criminal Appeal No.795 of 2013. The learned Magistrate awarded maintenance of Rs.4,000/- to the petitioner and Rs.4,000/- to Master Crist (in all Rs.8,000/-). Aggrieved by this order, the petitioner preferred Appeal before the Sessions Court, Greater Bombay. By order dated 19.11.2014, the learned Sessions Judge dismissed the Appeal.

3. In support of this Petition, Mr. Suryawanshi submitted that in paragraph 13 of application filed by the petitioner under Sections 12,18, 19, 20, 22 and 23 of the Act, the petitioner has specifically asserted that respondent is working as Maintenance Mechanic General in COSTAIN, Abu Dhabi Company for last 11 years and is getting salary of 1500 dirhams per month i.e. Rs.2,25,000/- per month. She has also annexed copies of salary certificates at exhibit-G (pages 37 to 39 of this Petition). He submitted that these certificates were produced before the learned Magistrate. He also submitted that the respondent filed reply to that application, and in paragraph 13 of that reply, it was asserted that drawing of the salary is a matter of fact. In other words, he submitted that the respondent did not dispute that he is drawing salary of 1500 dirhams per month which is equivalent to Indian Rupees 2,25,000/- per month. Despite that, the Courts below awarded maintenance of Rs.8,000/-, in all, per month to the petitioner and her son.

4. In view of this, issue notice before admission to the respondents, returnable on 03.03.2015. Mr. Patil, learned APP waives service for respondent No.2. Notice to indicate that subject to the time constraint and convenience of the Court, the Petition will be disposed of finally at the stage of admission. Notice shall further indicate that despite service, if respondent No.1 fails to appear, the Court will proceed to decide the Petition on its own merits.

3. Mr. Suryawanshi, points out that the Respondent No. 1 has been duly served and even an affidavit of service to that effect has been filed by the Petitioner in this Court.

4. As noted above, the parties were already put to the notice that this Petition will be disposed of finally at the stage of admission. It was also made clear that if despite of service Respondent No. 1 fails to appear, the Court will proceed to dispose of the Petition on its own merits.

5. The challenge in this Petition is to the orders dated 28th November, 2013 and 19th November, 2014 made by the trial Court and additional Sessions Judge awarding and confirming the award of interim maintenance of only Rs. 8,000/- p.m. instead of Rs. 80,000/- p.m claimed by the Petitioner for herself and her minor son Christ.

6. Mr. Suryawanshi points out that there is unconverted material on record that Respondent No. 1 was working as Maintenance Mechanic General in Abu Dhabi for 11 years. He submits that on the date the application for interim maintenance

was filed the Petitioner was getting salary of 1500 dhirams which is equivalent to Rs. 2,25,000/-. He submits that this material has been ignored by the two Courts and only a paltry maintenance amount of Rs. 8,000/- p.m. has been granted to the Petitioner and her son Christ. Mr. Suryawanshi submits that the impugned orders are vitiated by non application of mind and failure to advert to the relevant and material evidence on record. Mr. Suryawanshi submits that on these grounds, the impugned orders warrant interference and the Petitioner and her son Christ may be awarded interim maintenance of Rs. 80,000/- p.m.

7. The Petitioner instituted proceeding under Protection of Women from Domestic Violence Act, 2005 (D.V. Act) some time in June, 2013. In paragraph 13 of the Petition, the Petitioner made the following averments:

13. I say that I am a housewife and not having any source of income to maintain myself and my son Crist. I say that expenses have been going up and I and my son Crist require maintenance at the level of income of my husband is working as Maintenance Mechanic General in Costain, Abu Dhabi Company for last 11 years and getting salary of about 1500 dirhams per month i.e. Rs. 2,25,000/- per month in the present year 2013. Copies of his salary certificates are marked at Exhibit G colly.

8. If the salary certificate marked (Exhibit G) is perused, then it does appear that the Respondent No. 1 is working at Abu Dhabi and earning approximately 14499 dirhams p.m. or thereabouts. This is clear from the certificate dated 14th July, 2012. There is yet another certificate dated 30th November, 2010 which indicates that Respondent No. 1 was earning 13000 Dirams p.m. There are also some documents stating the earning of Respondent No. 1 in dirhams. As of today, the conversion rate is Rs. 20/- per dirham. This means that there was *prima facie* material to indicate that the Respondent was earning over Rs. 2 lakhs p.m. on the date when the Petitioner instituted proceeding under the D.V. Act.

9. As if the aforesaid was not sufficient, the Respondent No. 1 in his reply filed before the trial Court on 22nd July, 2013 has virtually admitted the averments made in para 13 as aforesaid at least in so far as the issue of his employment and income is concerned, Respondent No. 1 in para 13 of his reply has pleaded the following:

13. *With regard to para no. 13 of the application the respondent states that the respondent at her own withdrawn from the company of the respondent add is staying at her mother's place and further more the respondent submit that the petitioner has grabbed the huge amount and she has also sold their room no. 2 in*

Bhagwati chawl, as mentioned above and she has amassed wealth and now the mother of the petitioner is next door neighbour of the petitioner. The respondent states that the mother of the petitioner has made the life of the respondent miserable and on this count the petitioner is not entitled to claim any monetary relief as claimed by her. Drawing of the salary by the respondent is matter of fact.

(Emphases supplied).

10. Despite, the aforesaid material, the trial Court, by simply surmising the higher cost of living abroad and the amount of E.M.I. which Respondent No. 1 claims, he was paying in respect of same flat, by very cryptic order directed Respondent No. 1 to pay the maintenance of only Rs. 8,000/- p.m. to the Petitioner and her son Christ.

11. The entire discussion in one and half page in impugned order made by learned trial Court reads thus:

It appears that the respondent has purchased property in the joint name of himself and the applicant. At this stage, it would be premature for want of evidence, to give a finding of domestic violence on the applicant. However, since it appears that the applicant does not have a source of income and as the respondent is capable of providing maintenance. I am inclined to direct the respondent to give monetary assistance to the applicant in form of the maintenance. The high cost of living abroad and the amount of E.M.I to be paid towards the flat need to be taken into account besides the reasonable needs of the

applicant. Considering all these aspects, in my opinion an amount of Rs. 4,000/- p.m. for the applicant and an equal amount for master Crist should suffice.

Thus I hereby direct that the respondent shall pay to the applicant from the date of this application until final decision of the case a monthly of Rs. 8,000/-. The amount shall be paid by the 5th day of English calender month.

The respondent is hereby restrained until final decision of the case, from entering the house (Room No. 477A Church Pakhadi Road) of the applicant.

As regard other reliefs, the same would be heard at the final stage of the case after evidence recording.

12. The Appeal Court, it appears, did not even bother to look to the pleadings as well as the documents on record before dismissing the Petitioner's Appeal. In para 11 of the Appellate Court's order dated 19th November, 2014, this is what the Appeal Court observed:

It is evidence on record that the appellant has not produced any documentary or other evidence to show that respondent No. 1 is earning Rs. 15000 dirhams per month, which is equally to Rs. 2,25,000/-. In absence of concrete evidence on record the claim of the appellant for enhancement of interim maintenance to Rs. 80,000/- per month cannot be accepted at this stage.

13. The aforesaid observation is clearly contrary to the material on record. Taking into consideration, not only the salary

certificate produced on record by the Petitioner but further and most importantly the admission of Respondent No. 1 to pleadings in para 13 of the Petition under D.V. Act, the Appeal Court was not at all justified in proceeding on the basis that there was no concrete evidence on record in respect of the Petitioner's claim. The Respondent No. 1 was earning Rs. 15,000/- dirhams per month.

14. On the basis material produced on record, this is a fit case wherein the Respondent No. 1, by way of interim maintenance ought to have been directed to pay the interim maintenance of at least Rs. 50,000/- p.m. to the Petitioner and her son Christ. There is nothing on record to indicate that the Petitioner has some substantial source of income. In any case considering the income of the Respondent No. 1 and consequently the life style that the parties were accustomed to, it is only appropriate that the Respondent No. 1 pays interim maintenance of Rs. 50,000/- p.m to the Petitioner and her son Christ.

15. Mr. Suryawanshi points out that Christ is about 15 years old and therefore there are bound to be substantial expenses towards his education. The Petitioner along with her son are

residing in Mumbai when the proceeding under D.V. Act were instituted. Therefore, this much maintenance would be necessary for them to live in a city like Mumbai and towards educational expenses.

16. Accordingly, this Petition is allowed and the amount of interim maintenance is enhanced from Rs. 8,000/- p.m to Rs. 50,000/- p.m. This will have to be computed from the date of which the application for maintenance was made.

17. Rule is made absolute in the aforesaid terms.

18. The Respondent No. 1 shall pay cost assessed at Rs. 15,000/- to the Petitioner.

(M. S. SONAK, J.)