

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.5020 OF 2018

Atish Rakesh Agarwal and Ors. .. Petitioners

Versus

Pallavi Gajanan Mahavar &
Pallavti Atish Agarwal & Anr. .. Respondents

Mr. S.N.Biradar for petitioners

Mr. Jitendra Tiwari h/f. S.R.Dube for respondents.

CORAM : M.S.SONAK, J.

DATE : 3rd December 2018.

P.C.

Heard learned Counsel for the petitioner. The challenge in this petition is to the order dated 21st March 2018 and 14th September 2018 made by learned Magistrate and the learned Sessions Judge in proceedings under the Protection of Women from Domestic Violence Act, 2005 (said Act), awarding Rs.15,000/- per month to the respondent wife and minor daughter by way of maintenance and Rs.10,000/- by way of residential relief.

2] The operative portion of the impugned order dated 21st

March 2018 made by the learned Magistrate reads as follows:-

“1] Application is hereby party allowed. No order as to costs.

2] Respondent No.1 is hereby directed to pay Rs.15,000/- (Rs. Fifteen Thousand only) per month to the applicant from 6th January 2016 till further order.

3] Respondent No.1 further directed to pay Rs.10,000/- (Rs.Ten thousand only) for residential relief from the date of this order.

4] Rest of the claim of the complainant will be decided on merit.”

3] Mr. Biradar learned Counsel for the petitioner submits that there is absolutely no material on record to sustain prima facie finding that the petitioner's monthly income is Rs.50,000/-. He submits that as per the income tax returns filed by the petitioner, his income is much lesser. He points out that the two flats which the respondent state have been purchased by the petitioner, have in fact been, purchased by the petitioner's brother and father. He points out that the purchase is not complete and even the agreement for sale have not been entered into. He points out that since the brother and father were unable to pay the amounts, no agreements have yet been entered into.

4] He also submits that since the procedures in the R.T.O. Office are now online, there is reduction in the petitioner's income as R.T.O. Agent. He submits that all these aspects have not been taken into consideration by the two courts below.

5] Mr. Biradar submits that respondent – wife is carrying on business of sales of water purifiers along with her brother. He points out some material in the form of visiting cards to submit that the respondent wife is actually involved in the business which is carried out in the name of her brother or family members. He referred to some photographs to point out that the respondent wife and the minor daughter have been enjoying holidays at Ooty and this is indicative of the fact that the respondent has an independent income of her own, which she has not disclosed. He submits that this is an additional ground to interfere with the impugned orders.

6] Mr. Biradar finally points out that right from June 2013, the petitioner has been depositing an amount of Rs.2,000/- per month in the bank account of respondent -wife. This fact was

suppressed by the respondent – wife whilst claiming for interim maintenance. He, therefore, submits that this is also an additional ground for interference with the impugned orders.

7] Mr. Dube, learned Counsel for respondent – wife defends the impugned orders on the basis of reasoning therein. He points out that the respondent wife has no independent income and the maintenance of Rs.15,000/- will be barely sufficient. He points out that since the respondent along with her daughter stay in Mumbai, an amount of Rs.10,000/- per month towards residential relief is also bare minimum. He, therefore, submits that this petition may be dismissed.

8] Mr. Dube, however, does not dispute the fact that the petitioner has been depositing in the respondent -wife's account an amount of Rs.2,000/- per month. He submits that at the highest, some credit may be given to the petitioner but this is not at all a ground for interfering with the impugned order.

9] Rival contentions now fall for consideration:-

On the aspect of petitioner's income, there are concurrent findings, though prima facie, recorded by the learned Magistrate and Sessions Judge. The income tax returns on record belie petitioner's contention that he earns hardly Rs.8,000/- per month. The income tax returns for the year 2015-16 itself indicate petitioner's income at Rs.3,67,118/-. It is true that for the year 2017-18, the returned income is Rs.1,77,524/-. However, the learned Sessions Judge has quite correctly relied upon the ruling of the Apex Court in the case of Manish Jain Vs. Akanksha Jain, reported in **A.I.R. 2017 S.C. 1640**, in which the Apex Court has affirmed the observations made by the High Court that it has now become a matter of routine that as and when an application for maintenance is filed, the non applicant becomes poor displaying that he is not residing with the family members, if they have a good business and movable and immovable properties, in order to avoid payment of maintenance. The High Court had in fact observed that the courts cannot under these circumstances close their eyes when tricks are being played in a clever manner.

10] That apart, it is well settled that in such matters, the income which is reflected in the income tax returns is not the conclusive proof of entire income of the party, from whom maintenance is claimed. There is material on record with regard to the investments in two apartments at Nashik. The issue as to whether the petitioner has absolutely no truck with such investment is a matter which will have to be conclusively determined in the course of trial. However, assuming that the investments have been made only by the petitioner's brother, then, the petitioner's contention that he has the responsibility of maintaining his parents cannot, at prima facie stage, be accepted.

11] The two courts upon consideration of the material on record, have returned prima facie findings in relation to the petitioner's income. Taking into consideration the summary nature of enquiry contemplated at the stage of deciding an application for interim maintenance, it cannot be said that the impugned order or the findings as regards the income warrants interference in exercise of extra ordinary jurisdiction under Article 227 of the Constitution of India.

12] As regards, the income of the respondent wife, there is no much evidence on record. On the basis of her phone number on the visiting card or on the basis of some photographs which indicate that she may have travelled to Ooty on holiday, an inference that she is earning sufficiently for herself and her minor daughter, cannot be drawn and has rightly not been drawn by the two courts.

13] The quantum of maintenance is also not exorbitant as contended by the learned Counsel for the petitioner. The maintenance is of Rs.15,000/- per month towards wife as well as minor daughter. In addition, an order to pay Rs.10,000/- per month has been made towards residential cost. Taking into consideration the material on record and position of parties, it cannot be said that the award is too excessive or unreasonable.

14] The maintenance of Rs.15,000/- per month has been ordered from 6th January 2016. Since the petitioner has deposited an amount of Rs.2,000/- per month in the respondent's bank account, the petitioner shall be entitled to get credit for such deposit

from the period between 6th January 2016 and till such date he has been depositing the same. In short, from 6th January 2016 onwards, if the petitioner has indeed been depositing an amount of Rs.2,000/- per month in the bank account of respondent, then, he shall be entitled for credit of the said amount whilst computing the amount under the impugned orders.

15] Save and except the aforesaid modification, there is no case made out for interference with the impugned orders.

16] This petition is, therefore, dismissed with the above modification. There shall be no order as to costs.

17] Considering that the proceedings before the Magistrate have commenced in the year 2015, the learned Magistrate is requested to dispose of the same as expeditiously as possible.

(M.S.SONAK, J.)