

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.5006 OF 2017

Atul Suresh Chavan & Ors.

...Petitioners

V/s.

Preeti Atul Chavan & Ors.

...Respondents

Mr.Prasanna K. Shahane for Petitioners.

CORAM : G.S. KULKARNI, J.

DATE : 24th JANUARY, 2018**P.C.:**

By this petition, the petitioners challenge the order dated 12th September 2017 passed by the learned Additional Sessions Judge, City Civil Court, Greater Bombay, whereby Criminal Appeal No.410 of 2016 as filed by the respondent-wife is allowed in the following terms:-

- “1. Criminal Appeal No.410/2016 is partly allowed.
2. The order passed below Exh.4 in C.C. No.195/DV/2015 by the Metropolitan Magistrate, 52nd Court, Kurla, Mumbai on 04.04.2016 is modified to the extent that the Respondent no.1 shall pay Rs.5,000/- p.m. to the appellant towards maintenance and Rs.3000/- p.m. as a rent from the date of filing the petition before the Trial Court and till its disposal.”

2. The respondent-wife had approached the Court of Additional Chief Metropolitan Magistrate, Mumbai, by an application under Section 12, 19, 20, 22, 23 of the Protection of Women from Domestic Violence Act, 2005 (for short, “D.V. Act”) against the petitioner No.1 Atul Chavan-husband, petitioner No.2 Vinod Chavan who is brother of petitioner No.1 and petitioner No.3 Mrs.Sneha Chavan who is wife of petitioner No.2 as also against Smt.Kumudini Suresh Chavan who is the mother of petitioner Nos.1 and 2 and who has not assailed the

impugned order passed by the learned Sessions Judge.

3. Respondent No.1-wife in her application as filed before the Court of learned Metropolitan Magistrate had made the following prayers:-

“a) This Hon'ble Court be pleased to direct the Respondent No.1 to 4 to provide alternate accommodation for me as enjoyed by me in shared house hold or to pay the rent of Rs.20,000/- per month for the same.

b) This Hon'ble Court be pleased to direct the Respondents to return my properties/stridhan still lying with respondents at my matrimonial house.

c) This Hon'ble court be pleased to order the Respondent to pay adequate, fair and reasonable amount of maintenance being Rs.30,000/- per month to me.

d) This Hon'ble court be pleased to order the Respondents to pay the compensation and damages of Rs.50,00,000/- for the injuries, including abusing, assaulting, defaming, mental torture and emotional distress caused by the respondents.

e) Pending the final hearing and disposal of the complaint, prayer in terms of prayer clause (a) (b) (c) and (d) be granted.

f) Any such further order and direction be passed, as this Hon'ble Court may deem fit and proper in the circumstance of the case.”

4. Learned Metropolitan Magistrate by an order dated 4th April 2016 partly allowed the application of the respondent No.1-wife against the husband (respondent No.1 therein) in the following terms:-

“i) Respondent No.1 is directed to pay Rs.3,000/- (Rupees Three thousand) per month to the applicant from the date of filing of application till final disposal of case.

ii) Copy of order be given to both parties free of cost.”

5. Being aggrieved by the above order passed by the learned Metropolitan Magistrate, the respondent No.1-wife had approached the Additional Sessions Judge in Criminal Appeal No.410 of 2016 on the ground that the amount of maintenance which was granted was meager. It was her consistent stand that the petitioner No.1-husband was well-

placed and was earning more than Rs.50,000/- per month. Respondent No.1-wife had also pointed out the harassment caused to her by the petitioners and the mother-in-law. There were demands for money as also ill-treatment, mental and physical torture to her by petitioners from the very first day in the matrimonial house. She has categorically stated that as there was continuous demand of money by the husband and his brother, consequently an amount of Rs.3 Lakhs was given by brother of the respondent no.1-wife to the petitioner no.1-husband. It was also pointed out before the trial Court that the petitioners were residing in a luxurious flat of 1500 sq.ft and also possessing a valuable car worth Rs.12 Lakhs as also a motorcycle. The petitioners also possessed costly gadgets like mobile phones, tablets, laptop, kindles, two expensive LCDs as also 3 air conditioners. The petitioners also maintained a German shepherd dog whose monthly expenses were Rs.15,000/- per month. On these contentions, it was urged that the amount which was granted by the learned trial Judge of Rs.3,000/- per month was too low and insufficient for the respondent No.1-wife to sustain herself to rent out an accommodation for her own. The learned Sessions Judge considering the facts and circumstances and the hard stand of the petitioner No.1-husband that he is earning only Rs.5,000/- per month, for the reasons as set out in paragraph Nos.2 to 10, observed that the case of the petitioners that petitioner No.1 was drawing salary of Rs.5,000/- per month cannot be accepted. The learned Sessions Judge held that the respondent No.1 was compelled to stay in the parental house and that there was no justification in denying a reasonable rent, if the respondent No.1 intended to stay in a rented house. While disbelieving the contention of the petitioner No.1-husband that he was earning Rs.5,000/- per month, it was observed that considering his qualification and even assuming that a person is working on daily wages, he would earn more than what was canvassed by the petitioner No.1-husband. Thus, taking over all view of the matter, the learned Sessions Judge has

allowed the appeal of the respondent No.1-wife enhancing the amount of maintenance from Rs.3,000/- to Rs.5,000/- per month and in addition, has granted Rs.3,000/- per month as a rent from the date of filing of the petition before the trial Court.

6. The learned Counsel for the petitioners in assailing the order passed by the learned Sessions Judge contends that there was no material on the basis of which the learned Sessions Judge would come to a conclusion to enhance the amount of maintenance as granted by the learned trial Judge. It is submitted that the version of petitioner No.1-husband that he was earning Rs.5,000/- per month was required to be accepted when there was no contrary material. It is also submitted that the amount as directed to be paid by the Sessions Judge is on a higher side and was causing a serious prejudice to the petitioner No.1.

7. Having heard the learned Counsel for the petitioners and having perused the orders passed by the Courts below and more particularly the reasons recorded by the Sessions Judge in paragraph Nos.6 to 11 of the impugned order, in my opinion, the learned Sessions Judge has rightly held, that the version of the petitioner No.1-husband that he is earning Rs.5,000/- per month cannot be accepted. It is quite clear that the stand which is taken by the petitioner No.1-husband has been correctly disbelieved by the learned Sessions Judge in the facts and circumstances of the case. In any event the amount which has been granted is not too excessive or unreasonable. It is pertinent to observe that the prayers, which were made by the respondent No.1, are invoking the provisions of the D.V. Act.

8. It is pertinent that on facts, both the Courts have refused to believe the case of petitioner No.1-husband that he is earning Rs.5,000/- per month. There can be no manner of doubt that maintenance of an

amount of Rs.5,000/- per month granted to respondent No.1 can be regarded as excessive for her livelihood. It also cannot be disputed that the petitioners cannot foist upon the respondent No.1, to be at the mercy of her parents, and if respondent intends to stay independently, she would be required to pay rent for an accommodation and accordingly if Rs.3,000/- per month is granted to rent a house in Mumbai by no standard it can be said to be excessive. It cannot be countenanced that the petitioners together continue to lead a high standard living and on the other hand respondent No.1-wife is left with bare minimum to survive.

9. In the circumstances, I find no perversity in the impugned order as passed by the learned Sessions Judge. Petition lacks merits. It is, accordingly, rejected. No costs.

10. The learned trial Judge is requested to consider and decide the main proceedings as expeditiously as possible.

[G.S. KULKARNI, J.]