

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

WRIT PETITION No. 4467 OF 2016

Mrs. Harshali Vaibhav Ashinkar

...Petitioner

Vs.

Mr. Vaibhav Mahadev Ashinkar and Ors.

...Respondents

Mr. Ameya S. Tamhane, Advocate for Petitioner

Mrs. N.S. Jain, APP for the State

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 19, 2018

P.C.

1. In Domestic Violence proceedings initiated by the Petitioner pursuant to her marriage with Respondent No.1, the Chief Judicial Magistrate, Thane vide order dated April 25, 2016 awarded amount of Rs.15,000/- towards maintenance which was upset in an appeal under section 29 of the Protection of Women From Domestic Violence Act, 2005 (for short 'D.V. Act') being Appeal No. 61 of 2016 vide order dated September 22, 2016.

2. The learned counsel for the Petitioner / wife would urge that the order passed by the Learned Magistrate awarding maintenance of Rs.15,000/- that too at an interlocutory stage was just and proper order having regard to the fact that the Respondent-husband earning handsome salary of Rs.60,000/-.

According to him, even if presuming that the present Petitioner wife was earning, she was forced to resign from her employment with Western Outdoor with effect from 9th September, 2014. According to him, on the date of filing of the proceedings under the D.V. Act, there was no independent source of income of the Petitioner, which fact was lost sight of by the Appellate Court. According to him, the documents depicting the aforesaid position was not appreciated by the Learned Appellate Court. He submits that the order of the Appellate Court warrants interference.

3. From the record produced by the Petitioner, it would be inferred that the Petitioner was gainfully employed, a finding of fact recorded by the Appellate Court based on the documentary evidence viz. bank statement of the present Petitioner.

4. So far as the said issue is concerned, the Learned Chief Judicial Magistrate while awarding maintenance has not dealt with the same but in appeal, the Court has appreciated the same. The Appellate Court while deciding an appeal at an interlocutory stage, has recorded a finding that the Petitioner, not only before marriage, but even subsequent thereto was earning which fact was suppressed by the Petitioner from the Court.

5. Even if it is presumed that the Petitioner resigned from the service with

effect from 9th September, 2014, her capacity to earn could be inferred from the earlier conduct i.e. prior to and after marriage, the bank account entries speak of her ability to earn. In addition, the experience certificate produced by the Petitioner, copy of which is taken on record and marked 'X' for the purpose of identification, which is claimed to have been part and parcel of the Trial Court's evidence speaks voluminous about her capacity to earn.

6. That being so, the view expressed by the Appellate Court after appreciating in detail the pleadings and evidence brought on record which is a plausible, in my view, does not warrant any interference at this interlocutory stage.

7. So far as the earning capacity of the Petitioner and her dis-entitlement at an interlocutory stage to claim maintenance are concerned, a support can be drawn from the judgments of the Appellate Court in the matter of **S. R. Batra and Anr. Vs. Smt. Taruna Batra decided on 15.12.2006 in Civil Appeal No. 5837 of 2006 and Shumita Didi Sandhu Vs. Sanjay Singh Sandhu and Ors. Decided on 26.10.2010 in F.A.O. (OS) 341/2007.**

8. In view thereof, no case for interference is made out. Writ petition is dismissed.

9. Since the observations made herein are before recording the evidence on merits of the matter by the Trial Court, the same shall not be considered at the time of deciding the final proceedings.

[NITIN W. SAMBRE, J.]