

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.204 OF 2018

Sharad Ramrao Sonwane,
Age - 32, Occ. Labour,
R/o. Jai Bajrang Chowk,
Chandanzira, Jalna,
Tq. & Dist. Jalna.

... **APPLICANT**

Versus

1. Anjali W/o. Sharad Sonwane,
Age- 24 years, Occ. Houshold,
R/o. C/o. Prakash Jadhav,
Avishkar Colony, Cidco, N-6,
Aurangabad.
2. Arohi D/o Sharad Sonwane
Age- 3 years, Occ- Education,
R/o. C/o. Prakash Jadhav,
Avishkar Colony, Cidco, N-6,
Aurangabad. (Minor) under the
guardian of R/1.

... **RESPONDENTS**

...
Advocate for Applicant : Mr. Sham Jawale h/f. Amit A. Yadkikar
Advocate for Respondents : Mr. Dhiraj S. Gupta h/f. R.V. Gore
...

CORAM : MANGESH S. PATIL, J.
DATE : 09.10.2019

JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned advocate Mr. Dhiraj S. Gupta h/f. R.V. Gore waives service for the respondents. With the consent of both the sides the matter is heard finally at

the stage of admission.

2. The applicant is the husband of the respondent no.1 and father of the respondent no.2. The respondents have filed a proceeding under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the D.V. Act) against him and his other relatives claiming various reliefs under the Act. They also claimed interim monetary reliefs in terms of Section 23 of that Act. The learned Magistrate by the order dated 07.12.2017 directed the applicant to pay to the respondents in aggregate Rs.5,000/- per month from the date of the main proceeding.

3. The respondents challenged that order in appeal under Section 29 of the D.V. Act and claimed that the quantum of interim maintenance was less. By the impugned judgment and order the learned Additional Sessions Judge modified the order passed by the Magistrate and instead of Rs.5,000/- per month in aggregate, he awarded Rs.5,000/- per month to the respondent no.1 and Rs.10,000/- to the respondent no.2 from the date of the application. Hence this revision.

4. The learned advocate for the applicant submits that the amount of maintenance fixed has been arrived at arbitrarily. There was no concrete material before the Appellate Court to assess the quantum. In fact, even the

applicant had challenged the order passed by the Magistrate under Section 23 of the D.V. Act by preferring a separate appeal. A request was made to the Sessions Judge to transfer his appeal for being heard and decided with the appeal preferred by the respondents, however his request was not conceded to and the present appeal has been decided. Serious prejudice has been caused to the applicant. The impugned order therefore be quashed and set aside.

5. The learned advocate for the respondents submits that the applicant though had preferred a separate appeal and had sought it to be heard with the appeal preferred by them the learned Sessions Judge had not considered the request favourably, however the applicant has not challenged that order of the learned Sessions Judge and therefore he cannot be heard on that count.

6. The learned advocate for the respondents further submits that a specific averment was made in the application pointing out the extent of income of the applicant which was not objectively considered by the learned Magistrate particularly when there was no specific denial of these averments or a truthful disclosure about his occupation and income in the say filed by him to the main proceeding. A presumption ought to have been drawn by the Magistrate based on such state of affairs. He had fixed a meager maintenance of Rs.5,000/- jointly for the respondents. The observations and the

conclusions by the Magistrate were clearly perverse and arbitrary. Therefore no fault can be found in the Appellate Court stepping in and fixing quantum of interim maintenance which would ultimately merge in the final order. No prejudice is likely to be caused to the applicant since the main matter is yet to be decided.

7. I have carefully gone through the papers and the orders of both the Courts below. There is concurrent finding of facts as far as entitlement of the respondents to claim interim maintenance under Section 23 of the D.V. Act. *Prima facie* there is no reason to cause any disturbance in such concurrent findings.

8. So far as the submission of the learned advocate for the applicant that his request for hearing his appeal along with the appeal preferred by the respondents is concerned the request was denied by the learned Sessions Judge for whatever reasons. The fact remains that the applicant never challenged that order and therefore cannot be allowed to be heard on that count.

9. As far as quantum is concerned, the respondents in their application in paragraph 12 specifically alleged that the applicant runs Sarita Lady Shop at Chandanzira and earns net income of Rs.40,000/- to 50,000/-

per month from the business and further aver that he owns a Scorpio vehicle and earns around Rs.20,000/- to 25,000/- per month from its use. They further aver that he owns a building and earns around Rs.25,000/- to 30,000/- per month by renting out rooms therefrom. They also aver that he owns a house consisting of eleven rooms out of which he has leased out seven rooms and earns Rs.20,000/- to 25,000/- per month. They also aver that he has also leased out couple of shop premises and two rooms from another property and earns Rs.15,000/- to 20,000/- per month. Besides he has couple of plots worth lakhs of rupees and has three acres of irrigated land and earns Rupees Two to Three Lakhs per annum from it. They also aver that he has a huge bank balance. Conspicuously, in spite of such specific and clear averments, in the say filed by the applicant along with his parents and other relatives there are no denials even vague or evasive. He has also not come out with any disclosure about his occupation and income. If such is the state of affairs, one cannot gather from the reasoning given by the Magistrate as to why in the absence of such specific denial and truthful disclosure about occupation and income of the applicant in his say, the learned Magistrate was restricting the quantum of interim maintenance @ Rs.5,000/- per month only. The observations and the conclusions were clearly perverse and arbitrary and has rightly been interfered with in appeal by the learned Additional Sessions Judge.

10. True it is that the learned Additional Sessions Judge has not referred to such averments and absence of denial but in my considered view when he has considered the entire facts and circumstances and has found that quantum of interim maintenance arrived at by the Magistrate was grossly inadequate, I find no sufficient and cogent reason to cause any interference in this revision. The observations and the conclusions drawn by the Appellate Court are neither perverse nor arbitrary so that those can be interfered with.

11. The Revision is dismissed. The rule is discharged.

[MANGESH S. PATIL, J.]