

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 557 OF 2019****AND****WRIT PETITION NO. 558 OF 2019****WRIT PETITION NO. 557 OF 2019**

Mrs. Liz Henrietta do Carmo Gracias Petitioner
Versus
Vikram Fernando Velho Respondent

Mr. Aires Rodrigues, Advocate for the Petitioner.

Mr. S.D. Lotlikar, Senior Advocate with Mr. Chaitanya Padgaonkar, Advocate for the Respondent.

WRIT PETITION NO. 558 OF 2019

Vikram Fernando Velho Petitioner
Versus
Mrs. Liz Henrietta do Carmo Gracias Respondent

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Mr. Aires Rodrigues, Advocate for the Respondent.

CORAM :- C. V. BHADANG, J.**RESERVED ON :- 31st July, 2019****PRONOUNCED ON :- 19th August, 2019****COMMON ORDER:**

Both these petitions are between the same parties and arise out of an interim order dated 20.03.2019, passed by the learned Judicial Magistrate First Class at Panaji in DVA Case No. 33/2018/C. As such, they are being disposed off by this common order.

2. The parties herein are husband and wife. Their marriage was solemnized on 20.12.1999 in the Parish Church of Penha-de-Franca and is registered in the office of the Civil Registrar at Tiswadi, Panaji, Goa. The parties are blessed with a daughter, who was born on 16.10.2002. Although, in the initial days of marriage, the relationship between the parties was cordial, the marriage has run into rough weather since last eight years.

3. According to the wife, Ms. Liz Gracias, her husband, Mr. Vikram Velho has deserted the matrimonial house on 22.08.2013, leaving her and their minor daughter with no means of sustenance. She alongwith her daughter moved to U.K. on 28.05.2015, where she had taken a job. Presently, she claims to be jobless.

4. The husband has filed Matrimonial Petition No. 25/2016/B against his wife for dissolution of marriage, on the ground of cruelty.

5. The wife has filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (Act, for short), against the husband, claiming maintenance at

the rate of Rs.2 lakhs per month for herself and for the minor daughter w.e.f. 28.05.2015 and for a direction to the respondent-husband to remove himself from the matrimonial house and for putting her in possession of the same in terms of Section 19 of the said Act.

6. The applicant-wife filed an application (Exhibit-D/4), for interim relief in the aforesaid terms, which was opposed on behalf of the respondent-husband.

7. The learned Magistrate by an order dated 20.03.2019, had partly granted the application, directing the respondent-husband to pay an amount of Rs.75,000/- per month as maintenance, together for his wife as well as for the minor daughter and has restrained the husband from forcing the applicant-wife out of the matrimonial house or stopping her from entering the shared household. The respondent-husband was directed to hand over one set of keys of the matrimonial house to the wife.

8. Feeling aggrieved, the respondent-husband challenged the same before the learned Sessions Judge in Criminal Appeal No. 47/2019.

9. The learned Sessions Judge, by the impugned judgment and order dated 10.06.2019, has partly allowed the Appeal, reducing the maintenance to Rs.30,000/- i.e. only to the minor daughter. The learned Sessions Judge, while refusing to grant maintenance to the wife, however, has confirmed the part of the order directing the respondent-husband to hand over one set of keys of the shared household to the applicant-wife. Feeling aggrieved by the refusal of the maintenance, the applicant-wife has filed Writ Petition No. 557/2019, while Writ Petition No. 558/2019 is filed by the respondent-husband challenging the part of the order, by which, he has been directed to hand over the keys of the shared household to the applicant-wife.

10. I have heard the learned Counsel for the parties and perused record.

11. Mr. Rodrigues, the learned Counsel for the applicant-wife has strenuously urged that the learned Sessions Judge was not justified in interfering with the order granting maintenance to the applicant. The learned Counsel has extensively taken me through the evidence of the respondent, which is recorded in Matrimonial Petition No. 25/2016/B, in

order to submit that the respondent is having sufficient means to pay the maintenance and is leading an affluent life. In particular, the learned Counsel has referred to the part of the cross examination of the respondent pertaining to the issuance of various cheques on his Bank Account and about the frequent overseas travel of the respondent to Hong Kong, allegedly for meeting his girlfriend. He, therefore, submits that the learned Sessions Judge ought not to have interfered with the order passed by the learned Magistrate. It is submitted that the learned Sessions Judge having found that the applicant has lost her job, ought not to have interfered with the order of maintenance. While supporting the order, by which, the learned Magistrate has directed to hand over one set of the keys of the shared household, it is submitted that presently, the applicant has lost her job and is required to stay back in London, for want of accommodation in Goa. It is submitted that the applicant intends to come down to Goa and stay in the shared household, which she is entitled to do. He also pointed out the part of the cross examination of the respondent in the matrimonial petition, in which, he admitted that the matrimonial house (the shared household where the parties were staying) was gifted by his father at the time of marriage to them. He, therefore, submits that the impugned judgment

and order passed by the learned Sessions Judge be modified and the order of maintenance, as granted by the learned Magistrate, be restored.

12. Mr. Rodrigues, the learned Counsel for the petitioner has placed reliance on the decision of the Supreme Court in the case of **Shalu Ojha Vs. Prashant Ojha (2015) 2 SCC 99; Manish Jain Vs. Akanksha Jain (2017) 15 SCC 801; Jasbir Kaur Sehgal Vs. District Judge, Dehradun & Others (1997) 7 SCC 7** and the decision of this Court in the case of **Shlokha N. Chhabria Vs. Narendra A. Chhabria** (judgment dated 07.12.2018, passed in Writ Petition No. 594/2017) and the decision of the Delhi High Court in the case of **Ishant Nagpal Vs. Pooja Nagpal & Another** (judgment dated 31.05.2019, passed in CRL.REV.P.279/2017) and **Farooq Ahmed Shala Vs. Marie Chanel Gillier** (judgment dated 01.07.2019, passed in CRL.REV.P. 855/2018).

13. Mr. Lotlikar, the learned Senior Counsel for the respondent-husband has supported the impugned order to the extent of denial of maintenance to the applicant-wife. For the said purpose, the learned Senior Counsel has referred to para 3 of the written statement filed by the applicant-wife in the

matrimonial petition, in which, she has claimed that after they got married, they travelled to Austria, Slovakia, Portugal and U.K. at the expense of the applicant-wife because at the relevant time, the applicant was a Sales and Marketing Regional Manager for British Airways based in Goa. The applicant also claimed that the respondent never earned and was always supported by her and the respondent-husband even did not have means to buy necessary garments. He, thus, claimed that the respondent has no sufficient means to pay the maintenance. He pointed out that the respondent has complied with the order of maintenance insofar as the minor daughter is concerned. Insofar as the order directing to hand over one set of keys in respect of the shared household is concerned, it is submitted that the applicant is staying in London and she is not in need of the shared household. The learned Senior Counsel has referred to Section 19 of the Act in order to submit that under the said Section, no order directing the respondent-husband to hand over the keys of the shared household could justifiably be passed. He, therefore, urged that the part of the impugned order, directing handing over of the keys may be set aside.

14. I have carefully considered the rival circumstances and the submissions made. It is necessary to note that the application filed by the applicant-wife before the learned Magistrate is pending and the present petition, arises out of an interim order passed by the learned Magistrate on 29.03.2019. The learned Magistrate in his discretion had granted a consolidated maintenance of Rs.75,000/- to the applicant-wife and had restrained the respondent-husband from forcing the applicant-wife out of the matrimonial house or from “stopping her access to the shared household” and has directed to hand over one set of keys of the matrimonial house. The learned Sessions Judge has only modified part of the order insofar as the grant of maintenance to the wife is concerned.

15. Before considering the rival contentions, it is necessary to note that initially, the present petition was filed as a Criminal Writ Petition under Section 482 of Cr.P.C. read with Article 227 of the Constitution of India. On 27.06.2019, the learned Counsel for the applicant-wife sought leave to convert it as a Civil Writ Petition by deleting the challenge under Section 482 of Cr.P.C. Eventually, the petition was converted to a Civil Writ Petition. The office on the basis of a full bench decision of this Court in the case of **Nandakishor Vyawahare Vs.**

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has reported that the petition needs to be registered as a Civil Writ Petition. In that view of the matter, the petition is being entertained under Article 227 of the Constitution of India. The question in such circumstances is whether, the impugned order needs interference in the exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

16. As noticed earlier, both these petitions arise out of an interim order, as the parties are yet to record their evidence before the learned Magistrate. Both the parties have therefore relied upon the pleadings and the evidence in Matrimonial Petition No. 25/2016/B, filed by the respondent-husband for dissolution of marriage. Mr. Rodrigues, the learned Counsel for the petitioner strenuously urged, on the basis of the cross examination of the respondent (in the matrimonial petition) that the respondent is living an affluent and luxurious life. For instance, it was pointed out that after the marriage, the parties had gone for their honeymoon to Austria, Slovakia, Portugal and United Kingdom. However, at the same time, this is what is pleaded by the applicant in para 3 of the written statement in the matrimonial petition.

“The defendant states that in the year 1999, the plaintiff and the defendant got married and travelled on their millennium honeymoon to Austria, Slovakia, Portugal and U.K. The defendant states that it was the plaintiff's first time abroad and all the expenses were borne by the defendant, because the defendant was Sales and Marketing Regional Manager for British Airways based in Goa. The defendant states that the plaintiff never earned his money and always was supported by the defendant. The defendant states that the plaintiff even did not have money to buy his undergarments the plaintiff used to wear the same underwear for days he would switch between side A to side B (which was the reverse side). The defendant noticed this when the plaintiff complained of ring worm infection on his genital areas. The defendant states that even the cotrimazole and anti-fungal and bacterial powder was paid for by the defendant. The defendant noticing the condition and plight of the plaintiff in fact bought him an entire set of underwear.”

It can thus clearly be seen that even, according to the applicant-wife, all the expenses for the said overseas travel of the parties, after their marriage was borne by her as she was working as Sales and Marketing Regional Manager for British Airways based in Goa. In fact, there is a serious doubt as to whether, the evidence recorded in the matrimonial case can be

treated as substantive evidence in the application filed by the applicant-wife under the provisions of the Domestic Violence Act. However, even assuming that the said evidence can be looked into equally, the pleadings of the applicant-wife in the said matrimonial petition would also become relevant.

17. In the present case, it is undisputed that the applicant-wife was gainfully employed. However, she now claims on the basis of a letter dated 08.12.2018 from the CEO, "Knowledge Schools Trust", that she has been terminated w.e.f. 30.11.2018. However, as noticed earlier, the fact remains that, according to the applicant-wife, the respondent-husband had no means and was supported by her after marriage, even for basic necessities. The applicant-wife, at this stage, has not shown any specific business from out of which, the respondent-husband is drawing his income and the nature and quantum of such income drawn, except claiming that the respondent is assisting his father in his Real Estate business. The learned Sessions Judge, in my considered view, after taking into consideration the overall circumstances, has rightly refused to grant maintenance to the applicant-wife, while granting maintenance to the daughter and no interference is called for in the said part of the order.

18. The decisions relied upon by the applicant-wife, in my considered view, turned on their own facts. For instance, in the case of **Shalu Ojha** (supra), the Hon'ble Supreme Court found it difficult to accept that in a highly contested matter, the appellant would have instructed her Counsel not to press her claim for maintenance. Thus, the interference in the order of maintenance, on the basis of such statement, which was accepted by the High Court, was found to be unjustified.

19. Coming to the challenge to the order directing the respondent-husband to hand over one set of keys to the applicant-wife, here again, I do not find that any case for interference is made out. From the evidence of the respondent-husband recorded in the matrimonial petition, it is clear that the respondent-husband has accepted that the flat, which is the shared household was owned by his father, which was gifted to the parties herein, at the time of their marriage. *Prima facie*, there is material to show that it is the shared household. The contention by the learned Senior Counsel for the respondent that such an order, directing handing over of one set of keys could not have been passed under Section 19 of the Act, cannot *prima facie* be accepted.

20. Section 19 of the Act provides for residence orders, under which the Magistrate can restrain the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not, the respondent has a legal or equitable interest in the shared household and can even direct the respondent to remove himself from the shared household and restrain the respondent or any of his relatives from entering any portion of the shared household, in which, the aggrieved person resides. All that the learned Magistrate has done is ordering the respondent-husband to hand over one set of keys to the applicant-wife to enable her to occupy the shared household, which she is otherwise entitled to, as long as the relationship between the parties is subsisting. The object of Section 19 of the Act, is to ensure that the wife, who is the aggrieved person, is not forcibly dispossessed or precluded from occupying the shared household. In that view of the matter, the contention based on Section 19 of the Act, as urged on behalf of the respondent-husband, cannot be accepted.

21. I have carefully gone through the impugned judgment passed by the learned Sessions Judge and I do not

find that any case for interference is made out. It is necessary to note that the jurisdiction exercised by this Court under Article 227 of the Constitution of India is neither appellate nor revisional, but, essentially supervisory in nature and it is aimed at ensuring that the subordinate Courts and the Tribunals act within the bounds of their authority and the orders passed do not result into any manifest injustice (see **Shalini Shyam Shetty & Another Vs. Rajendra Shankar Patil (2010) 8 SCC 329**). It is significant to note that the respondent-husband has not been asked to remove himself from the shared household and the order so passed does not result into manifest injustice.

In the result, both the Petitions are dismissed, with no order as to costs.

C. V. BHADANG, J.

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