

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 171 OF 2018

MACLIN JOYCE PEREIRA E GOMES., ... Petitioner

Versus

LEWILL GOMES., ... Respondent

Mr. Salil Satish Saudagar, Advocate ULA/S for the Petitioner.
Mr. C. A. Coutinho, Advocate for the Respondent.

Coram:- C. V. BHADANG, J.

Date:- 8th April 2019

P.C.

Feeling aggrieved by the modification of the quantum of maintenance granted to the petitioner and the minor child, the petitioner is before this Court.

2. The parties are husband and wife. The petitioner has filed proceeding under The Protection of Women from Domestic Violence Act, 2005, (Act, for short), against the respondent being Criminal Case No.8/OA/PWDV/2014/D which are pending before the learned Judicial Magistrate First Class at Margao. By an order dated 06.03.2017, the learned Magistrate had granted an interim maintenance of Rs.20,000/- per month to the petitioner and the minor child. The arrears of maintenance from the date of the filing of the application were directed to be

deposited within 60 days. The petitioner challenged the same before the learned Sessions Judge in Criminal Appeal No.33/2017. By a judgment and order dated 02.07.2018, the learned Sessions Judge has partly allowed the appeal and has modified the order dated 06.03.2017. The learned Sessions Judge has granted maintenance to the petitioner and the child collectively at the rate of Rs.12,000/- per month from 06.03.2017 till November 2017 and from December 2017 at the rate of Rs.10,000/- per month. The arrears of the maintenance have been directed to be deposited within 30 days. Till today, the respondent has not paid any amount towards the interim maintenance.

3. I have heard Mr. Saudagar, the learned Counsel for the petitioner and Mr. C. A. Coutinho, the learned Counsel for the respondent. With the assistance of the learned Counsel for the parties, I have gone through the record.

4. Before the learned Magistrate, it was contended on behalf of the petitioner that the respondent was employed on a ship and was drawing 2300 US Dollars per month in the year 2010 which worked to over Rs.1,30,000/- per month and claimed maintenance of Rs.40,000/- for herself and for the minor child.

5. The respondent on the contrary claimed that the petitioner

has taken over the entire jewellery bought by the respondent and has also withdrawn an amount of Rs.11,00,000/- from the joint account maintained with the Federal Bank of India. It was contended that the petitioner also took away the educational documents, the property documents and all her movables including the Maruti Car and the respondent is unemployed since December 2012 and was depending on his immediate family members. The respondent however did not dispute that he had started his career on a ship at a salary of 300 US Dollars.

6. The learned Magistrate after considering the rival contentions had granted interim maintenance of Rs.20,000/- per month which has been modified by the learned Sessions Judge.

7. Mr. Saudagar, the learned Counsel for the petitioner submitted that the amount of maintenance could not have been modified on the basis of a singular salary certificate from "Medicine World", Margao. It is submitted that the respondent being an able bodied person is under legal and moral obligation to maintain the petitioner and the minor child. It is submitted that till today, the respondent has not cared to provide for their maintenance and even the orders passed have not been complied with. It is submitted that the learned Sessions Judge had no reason to modify the order of maintenance which is now directed to be paid at the rate of Rs.12,000/- per month from 06.03.2017

till November 2017 and from December 2018 at the rate of Rs.10,000/- per month. It is submitted that the learned Magistrate had granted maintenance from the date of the application i.e. 03.03.2014.

8. Mr. C. A. Coutinho, the learned Counsel for the respondent, on the contrary has submitted that the respondent is presently employed with "Medicine World", at Margao and is drawing a salary of Rs.12,000/- per month. It is submitted that the respondent has no capacity to pay the maintenance as has been awarded.

9. I have carefully considered the circumstances and the submissions made. The matter is still at the stage of the grant of interim maintenance. The relation between the parties is undisputed. There is a legal and moral obligation on the respondent to pay maintenance to his wife and child. It is undisputed that the respondent was employed on a ship. According to the respondent, he started working on the ship at a salary of 300 US Dollars. The learned Sessions Judge has noted various documents including several LIC policies which are in the name of the respondent and the salary slip for the month of December 2011 which shows 300 US Dollars as his basic salary and his total earning of 460 US Dollars. The learned Sessions Judge also relied on employment agreement of the respondent

dated 24.02.2010 which shows that the respondent no.1 earned a total monthly income of 2300 US Dollars. The learned Sessions Judge also found from the entries on the passport that the respondent has been flying time and again to various countries right up to 2016, which according to the learned Sessions Judge casts a doubt on the averment of the respondent that he is living a life of penury.

10. The determination of the quantum and that too at an interim stage involves a reasonable amount of guesswork depending upon the facts and circumstances of each case and the material on record. The determination of the quantum involves consideration of several factors such as the requirement of the wife as well as the child and the capacity/capability of the respondent-husband to pay the same. A reasonable assessment should be made particularly at the stage of the grant of an interim maintenance to arrive at the quantum.

11. I have given my anxious consideration to the circumstances and the material on record. Mr. Saudagar, the learned Counsel for the petitioner is right in contending that there is no specific reason spelt out in the judgment of the learned Sessions Judge for granting the maintenance from 06.03.2017 i.e. the date of the order of the learned Magistrate when the learned Magistrate had granted maintenance from the date of the application. The

learned Counsel for the respondent has brought to my notice only one certificate dated 13.06.2017 which shows that the respondent is employed with "Medicine World" at Margao, since 02.05.2017 and that he is drawing a salary of Rs.12,000/- per month. Nothing has been brought on record as to what is his present salary.

12. Considering the overall circumstances, I find that the petitioner can be awarded an interim maintenance of Rs.10,000/- from the date of the application i.e. 03.07.2014 which will meet the ends of justice.

13. In such circumstances, the following order is passed :

ORDER

(i) The petition is partly allowed.

(ii) The impugned order is modified. The respondent shall pay an amount of Rs.10,000/- per month to the petitioner and the child collectively as interim maintenance from the date of the application i.e. 03.03.2014 till the disposal of the main application.

(iv) The arrears of maintenance from March 2014 to March

2019 shall be paid within a period of 8 weeks from today.

- (v) The respondent shall continue to pay Rs.10,000/- from April 2019 on or before 10th of each English Calendar month.
- (vi) The learned Magistrate shall proceed to decide the main application as expeditiously as possible and preferably within a period of 6 months from the receipt hereof.
- (vii) Parties to co-operate for time bound disposal of the application.

C. V. BHADANG, J.

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