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

CRIMINAL REVISION APPLICATION NO. 291 OF 2018

Vinod Kadam	...	Applicant
V/s.		
Sandhya Vinod Kadam and anr	...	Respondents

**ALONG WITH
CRIMINAL REVISION APPLICATION NO.649 OF 2018**

Sandhya Vinod Kadam and anr	...	Applicant
V/s.		
Vinod Kadam	...	Respondent

Mr. Himanshu S. Shinde, for the Applicant in Revision No.291 of 2018 and for respondent in Revision No.649 of 2018.

Mr. Kunal Naik, for respondent in Revision Application No.291 of 2018 and for applicant in Revision Application No.649 of 2018.

Mr. S. S. Pednekar, APP for respondent State.

CORAM : N. J. JAMADAR, J.

DATE : 13th November, 2019.

PC. :

1] Heard learned counsel for the applicant, learned counsel for respondent and the learned APP

2] Criminal revision Application No.291 of 2018 is directed against

the judgment and order dated 23rd February, 2018, passed by the learned Additional Sessions Judge, Pune, in Criminal Appeal No.522 of 2017; whereby the learned Sessions Judge has enhanced the amount of interim maintenance to be paid by the applicant husband to his wife Sandhya, respondent No.1 and Master Mohit, his son, respondent No.2, to Rs.15,000/- and Rs.20,000/-, per month from Rs.5,000/- each, awarded by the learned Magistrate in Misc. Application No.2893 of 2017, by order dated 7th October, 2017.

3] Criminal Revision Application No.649 of 2018, is preferred by wife and son the appellants in the above appeal for further enhancement in the amount of interim maintenance.

4] It was urged on behalf of learned counsel for the applicant husband that the learned Sessions Judge has erred in enhancing the amount of interim maintenance from Rs.10,000/- per month to Rs.35,000/-, in the aggregate. The learned counsel for the applicant has made a grievance that the learned Sessions Judge has taken into consideration the documents which were tendered for the first time in appeal and on the strength thereof recorded a finding that the applicant has sumptuous income from various businesses, and, therefore, the amount of maintenance was required to be enhanced. It was submitted that when the appellant wife tendered documents before the Appellate Court, for the first time, it would have been

in the fitness of things for the learned Sessions Judge to remand the matter back to the learned Magistrate for afresh consideration instead of himself evaluating the documents and recording finding which amounts to finally deciding the application for maintenance. On the quantum of interim maintenance, it was submitted that the applicant is taking care of household expenses of his wife and son, including educational expenses. Moreover, the applicant and respondent wife and son are residing under one and the same roof i.e. flat No.C-2 Dhone Nahar Complex, Near Sunderban Society, Katraj-Kondhwa road, Katraj, Pune 411 046. Thus, the multi-fold enhancement in the amount was unjustified.

5] Per contra, the learned counsel for the respondent has submitted that the applicant has multiple sources of income. The applicant, in addition to being a builder, deals in money lending business. Though respondent has furnished the details of the income of the applicant, yet the learned Magistrate awarded meager maintenance of Rs.5,000/- per month to the respondent Nos. 1 and 2, which was justifiably modified by the learned Sessions Judge. However, having regard to the lifestyle and the status of the applicant and the circumstances of the case, even award of interim maintenance at the rate of Rs.35,000/- is on the lower side and the same is required to be further enhanced suitably, urged the learned counsel for respondents.

6] It is evident that the marital discord between the parties, on account of alleged extra marital relations of the applicant, has resulted in institution of proceeding under Domestic Violence Act. The applicant has been restrained from dispossessing the respondent wife from shared household. In addition, the learned Magistrate was persuaded to award maintenance at the rate of Rs.5,000/- per month to the respondents, by way of interim monetary relief.

7] From the perusal of the order passed by the learned Magistrate, it is evident that it is virtually bereft of consideration of the income of the applicant and the requirements of the respondents. A general observation is made that considering the facts and circumstances it would be proper to grant maintenance at the rate of Rs.5,000/- by way of interim maintenance. The learned Sessions Judge, in the impugned order, adverted to the various stated sources of income of the applicant and found that the amount of interim maintenance at the rate of Rs.5,000/- to the respondent was meager. There is some substance in the submission on behalf of applicant that since the documents tendered before the Appellate Court were not placed before the learned Magistrate, the learned Sessions Judge ought not to have recorded definitive finding based thereon. The order passed by the learned Sessions Judge does not adequately deal with the parameters on which quantum of maintenance is required to be determined. However, the fact

remains that as many as 18 items of the income were shown to exist for the applicant. Whether those properties and sources generate income is a matter for adjudication. However, in the light of inflationary trend of economy, maintenance at the rate of Rs.5,000/- per month appears to be on the lower side for the respondent No.1 to keep her body and soul together. The respondent No.2 being a teenager also requires adequate funds to meet his growing educational and other needs.

8] In the aforesaid backdrop, I am not persuaded to either interfere with the impugned order enhancing the amount of maintenance or further enhance the amount of maintenance as claimed by the respondents. The application for maintenance is stated to be pending before the learned Magistrate. The matter is now posted for recording of evidence of the respondents. In the circumstances, it would be in the fitness of things to direct the learned Magistrate to decide the application for maintenance as expeditiously as possible and preferably within a period of four months from the date of appearance of the parties. Expeditious disposal of the main application is the only solution to obviate multiple proceedings challenging the quantum of interim maintenance, as being either inadequate or exorbitant. Hence, both the Revision Applications stand disposed of with the following directions :-

i] The learned Judicial Magistrate First Class, Pune, who is seized of the Miscellaneous Application No.2893 of 2017 shall hear and decide the application for monetary relief finally at the earliest and preferably within a period of four months from the date notified for appearance of the parties before him.

ii] The parties shall appear before the learned Magistrate on 25.11.2019 and it shall not be necessary to issue notice to the parties.

iii] The parties shall co-operate the learned Magistrate in expeditious disposal of the application.

iv] In the meanwhile applicant shall deposit the entire amount, for which recovery warrant was issued by the learned Magistrate and the execution of which was stayed by this Court, by order dated 18th July, 2018, within a period of four weeks from today.

v] The applicant shall also pay the arrears of interim maintenance at the rate ordered by the learned Sessions Judge, as accumulated upto the date of this order, within a period of three months from today.

During the period stipulated for deciding the main application, the applicant shall pay interim maintenance at the rate of Rs.10,000/- per month each to the respondent Nos.1 and 2, i.e. Rs.20,000/- in the aggregate, which shall be subject to the outcome of main application. If the main

application is not decided within the period stipulated by this Court, the interim maintenance shall be paid at the rate determined by the learned Sessions Judge, after expiry of the said period.

vi] All contentions are kept expressly open and the learned Magistrate shall decide the main application without being influenced by any of the observations made in this order.

vii] Revision Applications stand disposed of in the above terms.

[N. J. JAMADAR, J.]