

Dond

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

REVISION APPLICATION NO. 325 OF 2019

Suleman Budhwani

..Applicant

Vs

Dilshad Budhwani & Anr.

..Respondents

Ms. Vikranti Rao I/b Tejas Deshpande for the Applicant.

Mr. Samir Sarambalkar for Respondent No.1.

Mr. R.M. Pethe, APP State/Respondent No.2.

CORAM : A.S.GADKARI, J.

DATE : 21st August 2019.

P.C.:

1] By the present Revision Application under Section 397 of the Code of Criminal Procedure, the applicant has impugned Judgment and Order dated 27th March 2019 passed in Criminal Appeal No. 289 of 2018 by the learned Additional Sessions Judge at Dindoshi, Borivali Division, Mumbai, modifying the Order dated 4.8.2018 passed below Exh.C-10 in C.C. No.224/DV/2016 by the learned Metropolitan Magistrate, 10th Court, Andheri, Mumbai

2] Heard the learned counsel for the applicant, learned counsel for the respondent No.1 and the learned APP for the Respondent No.2/State. Perused the record annexed to the Revision Application.

3] The record indicates that, the respondent No.1 Wife has filed an Application bearing No.224/DV/2016 under Section 12 and other related sections of Protection of Women From Domestic Violences Act, 2005 (for short “the said Act”) in the Court of Metropolitan Magistrate, 10th Court, Andheri, Mumbai. In the said Application, respondent No.1 wife filed an application under section 23 of the said Act seeking interim relief/maintenance. After receipt of summons, the applicant/husband filed his detailed reply below Exh.13.

4] It is the contention of the applicant that, he is earning Rs.12,300/- per month and his wife i.e. respondent No.1 herein earning much more than him. That it is not possible for him to pay the amount claimed by the respondent No.1 in her application under section 23 of the said Act. After getting prima facie satisfied about the need of respondent No.1, the Trial Court has directed the applicant to pay maintenance of Rs.20,000/- to the respondent No.1 and her child begotten from their wedlock, who is as of today 10 years of age. The said maintenance is to be paid from the date of filing of the said application below Exh.C-10.

5] The applicant thereafter filed Criminal Appeal No.289 of 2018 under section 29 of the said Act before the Court of Sessions, Mumbai. The Appellate Court after hearing the parties and after reappreciating the entire evidence available on record was pleased to reduce the quantum of maintenance from Rs.20,000/- to Rs.15,000/- per month to be paid to the respondent No.1 and the

child from the date of filing of application, by its Judgment and Order dated 27th March 2019.

6] Learned counsel for the applicant submitted that, the respondent No.1 left to her matrimonial house two/three years prior to the date of filing of said Application No.224/DV/2016 and is residing at Vapi, State of Gujrat. That before passing the impugned Order, the Trial Court did not conduct enquiry in the application as was necessary under section 23 of the said Act. She submitted that, by relying on report forwarded by the Protection Officer, the Trial Court had granted the said maintenance in favour of the respondent No.1 and the child. She submitted that, various documents filed by the applicant have not been taken into consideration by both the Courts below while passing impugned Orders. She therefore prayed that the aforestated impugned Orders may be set aside by allowing the present Revision.

7] The scope of the Application under section 397 of Cr. P.C. has been recently elaborated by the Honourable Supreme Court in the case of State of Gujarat Vs. Afroz Mohammed Hasanfatta reported in AIR 2019 SC 2499. It is held that, the High Court does not act as an appellate court and will not reappreciate the evidence unless the judgment of the lower court suffers from perversity. That when the satisfaction of the Magistrate was based on the chargesheet and the materials placed before him, the satisfaction cannot be said to be erroneous or perverse and the satisfaction ought not to have been interfered

with . The Honourable Supreme Court observed that, the learned Single Judge ought not to have gone into the merits of the matter when the matter is in nascent stage.

It is by now settled that, while considering an application under 23 of the said Act, the Magistrate need not weigh and scrutinize the entire evidence placed before it minutely and the prima facie satisfaction of the Magistrate for granting interim relief in favour of the applicant therein is necessary.

8] As noted earlier, the maintenance granted by the Magistrate has been reduced by the Appellate Court after reappraisal of the evidence on record. Order impugned herein is purely an interlocutory Order and the main proceedings filed under Section 12 of the said Act by the respondent No.1 is pending for final adjudication on the file of the learned Magistrate. In that view of the matter, I am not inclined to further modify the impugned Order.

9] After perusing the entire record, this Court is of the view that both the Courts below have not committed any error either in law or on facts.

Revision Application being devoid of merits, is accordingly rejected.

(A.S.GADKARI, J.)