

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4011 OF 2019

Mr.Manish Yashdev Bahl

Adult Indian inhabitant

Aged about 42 years, Occu.-Nil,
Residing at – A-702, Tara Building,
Shrishti Complex, Saki-Vihar road,
Opposite L&T Gate No.7, Powai,
Sakinaka, Mumbai – 400072.

... **Petitioner**

Versus

1. Mrs.Suman M. Bahl @
Suman Giansingh Saini
Aged 37 years, Adult Indian
inhabitant Residing at-308,
Sandy Flam, Dosti Flamingo,
TJ road, Sewri West
Mumbai 0 400015

2 The State of Maharashtra **Respondents**

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Ms.Susy Mathew, Advocate for the Petitioner.

Mr.Ashok M.Chopra, Advocate for the Respondent No.1.

Mr.Vinod Chate, APP for the Respondent No.2/State.

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CORAM : A.M.BADAR J.

DATED : 9th OCTOBER 2019.

ORAL JUDGMENT :

1 Heard.

2 Rule. Rule is made returnable forthwith. Heard finally by consent of the parties

3 By this petition, the petitioner/husband is challenging the Order dated 28/06/2019 passed by the learned Additional Sessions Judge, Greater Mumbai in Criminal Appeal No.64 of 2019 filed by the respondent/wife/aggrieved person challenging rejection of her claim for maintenance for herself as well as to her son. By the impugned Order, the learned Additional Sessions Judge was pleased to grant interim maintenance of Rs.25,000/- to the son of petitioner and respondent No.1/wife per month from the date of the application.

4 Facts in brief are thus :

The respondent No.1/wife preferred an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Domestic Violence Act' for the sake of brevity) before the learned Additional Chief Metropolitan Magistrate, Mumbai claiming various reliefs and during pendency of that application, she preferred an application for interim maintenance. She claimed maintenance of Rs.65,000/- per month from her husband which included maintenance of their son also. By the Order dated 29/12/2018, the learned Metropolitan Magistrate was pleased to reject the application for interim maintenance. The learned Metropolitan

Magistrate held that the wife is not entitled for maintenance as she was residing separately from the husband since the years 2010 i.e. after delivery of the son. The learned Metropolitan Magistrate while rejecting the claim of respondent/wife further held that there appears to be differences between the parties and the wife has failed to establish the domestic violence at the hands of the husband. This Order came to be assailed by the wife by filing an appeal under Section 29 of the Domestic Violence Act. The learned Additional Sessions Judge allowed the appeal partly. Claim for maintenance made by the wife came to be rejected. However, the husband is directed to pay maintenance of Rs.25,000/- per month for his son by the impugned Order.

5 Heard the learned Counsel appearing for the petitioner/husband. She vehemently argued that domestic violence is not proved in order to grant maintenance. Only two instances are there in the main application. The learned Counsel for the petitioner further argued that the wife was working as Senior Manager, Sales with the Gold's Gym India and was earning handsome amount. She further argued that despite notice to produce documents, the wife has not produced any document reflecting her earning. After giving birth to a child, the wife is residing away from the petitioner/husband from the year 2010. The learned Counsel further argued that in the year 2016, the husband has applied for restitution of conjugal rights and the wife

has also claimed maintenance in those proceedings. The wife is highly qualified person and she made contradictory statements regarding her employment. In submission of the learned Counsel for the petitioner, the wife is earning a salary of Rs.2,00,000/- per month by working as a Senior Sales Manager, whereas the petitioner/husband is a jobless person and he is not earning anything.

6 As against this, the learned Counsel appearing for the respondent/wife drew my attention to the petition under Section 9 of the Hindu Marriage Act filed by the petitioner husband and argued that income of the husband is reflected from pleadings in that petition. He further argued that the application under Section 12 of the Domestic Violence Act is reflecting the instances of domestic violence committed by the husband on the wife.

7 I have carefully considered the submissions so advanced and perused the material placed on record including the impugned Order.

8 The term 'domestic violence' is defined by Section 3 of the Domestic Violence Act. The said definition is a wide definition which includes causing physical abuse, sexual abuse, verbal and emotional abuse so also economic abuse of a woman. Viewed from the context of definition of the term 'domestic violence' as

found in Section 3 of the Domestic Violence Act, perusal of the application under Section 12 of the Domestic Violence Act moved by the respondent/wife before the Metropolitan Magistrate makes it clear that instances of domestic violence are reflected in the said application. Whether those instances are correct or not is a subject matter of trial. Suffice to state that application under Section 12 of the Domestic Violence Act moved by the respondent/wife demonstrates the acts of domestic violence.

9 Though the claim was for interim maintenance of Rs.65,000/-, the learned Additional Sessions Judge in appeal was pleased to reject the claim of maintenance so far as respondent/wife is concerned. However, the learned Additional Sessions Judge considered the matter from the perspective of the maintenance of the child. The learned Additional Sessions Judge gave a finding that wife had given list of expenses which she is incurring on her son. It is not disputed that the son is born out of wedlock between the parties. The learned Additional Sessions Judge observed that the learned Metropolitan Magistrate has not considered the need of son born out of the wedlock and concluded that the child is entitled for maintenance of Rs.25,000/- per month.

10 Section 36 of the Domestic Violence Act makes it clear that the provisions of Domestic Violence Act are in addition to and not in derogation to any other law. Section 20(1)(d) of the

Domestic Violence Act makes it clear that award of maintenance thereunder to an aggrieved person can be in addition to maintenance under Section 125 of the Code of Criminal Procedure. Thus, it is seen that the provisions of Domestic Violence Act ensure that appropriate maintenance is provided to the aggrieved person. Viewed from this angle, pendency of the application for maintenance before the Family Court is of no consequence and the Family Court can keep in mind the quantum of maintenance awarded to the child by the learned Additional Sessions Judge in an appeal.

11 Pleadings of the petitioner/husband makes it clear that the wife was working as Senior Manager, Sales with the Gold's Gym India for a limited period since 16/03/2015 to 20/11/2015. There is no iota of evidence to show that she is thereafter gainfully employed. Pleadings of the husband found in his petition under Section 9 of the Hindu Marriage Act shows that she was earning salary of Rs.8,00,000/- per annum. Undisputedly, petitioner/husband is a able-bodied person. Being a father, he is found to maintain his child.

12 Quantum of maintenance always lies in the discretion of the trial Magistrate and in the case in hand error committed by the learned trial Magistrate in deciding the interim maintenance application is corrected by the learned Additional Sessions Judge

in an appeal. The discretion so exercised cannot be said to be arbitrary or capricious. The quantum of maintenance awarded to the son of the couple is commensurate with the earning of the husband reflected from the pleadings. No case for interference in the interim Order of maintenance is, therefore, made out.

13 Reliance is placed on Judgment dated 5th May 2014 of the learned Single Judge in Criminal Writ Petition No.32 of 2014 (*Koushik s/o. Anil Gharami versus Sau.Sangeeta Koushik Gharami & Ors.*) by the learned Counsel for the petitioner/husband. In paragraph 9 of the said Judgment, it is observed by the learned Single Judge of this Court that the monetary relief is available for the children of the aggrieved person if the monetary relief is required to meet the expenses incurred by the aggrieved person as a result of domestic violence. I have already held that the instances of domestic violence are reflected in the application under Section 12 of the Domestic Violence Act. Undisputedly, the child is in custody of the respondent/wife since his birth and, as such, he is in need of maintenance. Therefore, the Judgment so cited cannot enured to the benefit of the petitioner.

14 Petition is, therefore, dismissed.

(A.M.BADAR, J.)