

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1197 OF 2016

Bharat Kantilal Parikh	...	Applicant
Versus		
The State of Maharashtra & Anr.	...	Respondents

WITH
WRIT PETITION NO.487 OF 2016

Dipti Bharat Parikh ... **Petitioner**
 Versus
 The State of Maharashtra & Anr. ... **Respondents**

Mr.Vivek Sharma, Advocate for the Applicant in APL/1197/2016 and for Respondent No.2 in WP/487/2016.

Ms.Mallika A. Ingale, Advocate for the Applicant in
Petitioner/487/2016 and for Respondent No.2 in APL/1197/2016.

Mr.A.R.Kapadnis, the Additional Public Prosecutor for the Respondent/State.

CORAM : A.M.BADAR J.

DATED : 20th DECEMBER 2019.

ORAL JUDGMENT :

1 Heard.

2 Rule. Rule is made returnable forthwith. Heard finally.

3 Criminal Application No.1197 of 2016 is filed by husband/original respondent by resorting to the provisions of Section 482 of the Code of Criminal Procedure Code, whereas Criminal Writ Petition bearing No.487 of 2016 is filed by the aggrieved person/wife by invoking provisions of Article 227 of the Constitution of India. By both these proceedings, Judgment and Order dated 27/10/2015 passed by the learned Additional Sessions Judge in an appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the D.V.Act' for the sake of brevity) is challenged. By this impugned Order, the learned Additional Sessions Judge in an appeal partly allowed claim of interim maintenance by the aggrieved person/wife and directed the respondent/husband to pay interim maintenance of Rs.4,000/- per month from the date of Appellate Order till disposal of the proceedings under the D.V.Act. For the sake of convenience, parties shall be referred to in their original capacity. Aggrieved person Dipti Parikh had preferred an application under Section 12 of the D.V.Act and claimed several reliefs against respondent/husband Bharat Parikh. She averred that she married the respondent on 22/02/1988 and out of the wedlock the couple is blessed with son named Kshitij. The aggrieved person categorically averred that she has been compelled to carry on sundry works like taking tuition, preparing decorative items, handicrafts, selling utility articles, etc. to maintain herself and her son as well as for coping with other

expenses and expenses of education of their son. In the application the averments regarding economic abuse are also made. The aggrieved person contended that she was finally compelled to leave and driven away from matrimonial home on 20/05/2012. With this, she claimed various reliefs including maintenance at the rate of Rs.25,000/- per month.

4 Along with application under Section 12 of the D.V.Act, the applicant had preferred separate application for interim maintenance as well as direction to pay amount of Rs.2,00,000/- for security deposit as well as further direction to pay 20,000/- towards rent for separate accommodation.

5 Claims made by the aggrieved persons came to be opposed by filing reply. The respondent/husband denied each and every averment including infliction of domestic violence on the aggrieved person. It is averred in the reply that as the aggrieved person had left the matrimonial house and as the respondent has no source of income, the applicant is not entitled for maintenance, security deposit as well as the amount claimed by way of rent. The respondent/husband contended that the applicant is earning more than Rs.20,000/- per month and her son is earning more than Rs.15,000/- per month.

6 After hearing the parties, the learned trial Magistrate came to the conclusion that there is no specific documentary

evidence showing income of both the parties and it is necessary for the parties to prove who has deserted whom. Hence, the learned trial Magistrate directed that the interim application shall be decided with the main application.

7 Feeling aggrieved by the Order rejecting interim relief, the aggrieved person/wife preferred an appeal under Section 29 of the D.V.Act. The Appellate Court after considering the material placed on record was pleased to allow the appeal partly by granting interim maintenance at the rate of Rs.4,000/- per month from the date of the Appellate Order till disposal of the proceedings. However, the learned Appellate Court did not allow the claim for security deposit as well as rent as an interim relief for the aggrieved person.

8 I heard the learned Counsel appearing for the respondent/husband. She vehemently argued that the aggrieved person is self-employed person having her own source of income. She is a trained Montessori teacher and apart from that she is selling several items for earning livelihood. It is submitted that the aggrieved person is financially well settled in life and her son is also earning huge amount as he is practising Chartered Accountant. Therefore, she cannot claim maintenance from the husband, who is old aged ailing person. No affidavit has been placed on record to show income of the parties by the aggrieved person.

9 The learned Counsel for the respondent/husband further argued that the affidavit dated 20/05/1999 has been obtained in the matter by playing tricks by the aggrieved person whose family members are well versed in law. The said affidavit is dated 20/05/1999 whereas the aggrieved person has claimed that she has left the matrimonial house on 20/05/2012. The copy of this affidavit is not supplied to the affiant. After 1999, there is not a single report of non-cognizable case and there is no instances of domestic violence since then. The residential house of father of the respondent/husband was transferred in the name of two daughters i.e. sisters of the respondent/husband and therefore, the application under Section 12 of the D.V.Act is came to be filed by the aggrieved person in order to harass the respondent/husband. In fact, he is the victim of the follies at the instance of the aggrieved person.

10 The learned Counsel for the aggrieved person contended that it is the duty of the husband to maintain his wife. Earning paltry sum by doing various works cannot be used to disallow claim of maintenance made by a wife. She further argued that the learned Appellate Court erred in granting interim maintenance from the date of the Appellate Court Order.

11 I have considered the submissions so advanced and also perused the impugned Judgment and Order passed by the

learned Appellate Court. It is well settled that provisions of Section 482 of the Code of Criminal Procedure can be resorted to only in exceptional cases in order to prevent abuse of process of Court and for furtherance of natural justice. Quantum of maintenance lies in discretion of the Court and when such discretion is exercised fairly by keeping in mind all relevant aspects, the Order of maintenance cannot be faulted with.

12 In the case in hand, marriage of parties is not disputed. The aggrieved person had left the matrimonial house on 20/05/2012. She has claimed that she was driven out from the matrimonial house. The respondent is disputing this fact. However, it is clear that after 2012, the parties are not cohabiting with each other. Domestic relationship between the parties and their stay in the shared household is not disputed. The learned Appellate Court while deciding the appeal filed by the aggrieved person has held thus in paragraph 5 :

“5..... At the same time, it has to be borne in mind that appellant is wife of respondent. This fact is not disputed and the provision of law abundantly speaks about protection of woman and providing maintenance to wife and not to husband. All these statutes including provisions in Domestic Violence Act have been enacted in the interest of woman and to protect the woman. The fact that relationship between

husband and wife is not disputed. Duty is cast upon husband to provide maintenance to the wife. Thereafter other factors governs in respect of what amount of maintenance is to be granted. Here is case where admittedly appellant was taking coaching classes. This itself will not show that appellant has regular income and therefore, she is not required to be maintained by husband. At the same time appellant has come with the case that respondent earns sufficiently high income and can provide maintenance to the appellant. At this juncture, it would be useful to take a look at the observation of their Lordships in the case of Gajendra Singh Yadav V/s Bindu Yadav, LAWS (RAJ)-2013-5-52, wherein it has been held that :

“The provisions under the Protection of Women from Domestic Violence Act are enacted for social justice and specially to protect woman and children and falls within the Constitutional sweep of Article 15(3) of the Constitution of India, reinforced by Article 39 of the Constitution of India. The provision gives effect to natural and fundamental duty of a man to main his wife and child. The object of the maintenance is not to punish the person for his past neglect but to prevent vagrancy by compelling those who can do so to support those who are unable to support themselves and who have a moral claim to support.”

13 All provisions of the D.V.Act were considered by the learned Appellate Court. It is not in dispute that the respondent is husband of the aggrieved person. She is residing separately from him. It cannot be doubted that the husband is duty bound to maintain his wife. Though the learned trial Magistrate had rejected claim of interim maintenance of aggrieved person; with well reasoned Order, the learned Appellate Court has granted maintenance of Rs.4,000/- per month to the aggrieved person/wife as an interim measure till disposal of the proceedings and that too from the date of the Appellate Order. Exercise of such discretion by the learned Appellate Court cannot be said to be arbitrary, capricious or unjustified. Ultimately, being husband of the aggrieved person, the respondent/husband is liable to maintain her. The challenge to the quantum of interim maintenance, as such, is devoid of merit. It cannot be said that the Order granting interim maintenance amounts to abuse of process of Court. The challenge, therefore, fails.

14 The Appellate Court has directed the payment of interim maintenance from the date of the Order of the Appellate Court. The proceedings under Section 12 of the D.V.Act were initiated way back in the year 2012. Instead of disturbing this Appellate Order, it will be apposite to direct trial of the proceedings under Section 12 of the D.V.Act in a time-bound manner. Therefore, it is not necessary to interfere in the Order of interim maintenance. Hence, the following Order :

ORDER

- (i) The Application as well as the Writ Petition stands dismissed.
- (ii) The learned trial Magistrate is directed to dispose of the proceedings under Section 12 of the D.V.Act expeditiously.
- (iii) The Application as well as the Writ Petition is accordingly disposed of.

(A.M.BADAR, J.)