

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.5002 OF 2019

Nimish Ramesh Shah ... **Petitioner**
Versus
Hetal Nimish Shah & Anr. ... **Respondents**

WITH
INTERIM APPLICATION NO.1 OF 2019
IN
WRIT PETITION NO.5002 OF 2019

Hetal Nimish Shah ... **Applicant**
Versus
Nimish Ramesh Shah & Anr. ... **Respondents**

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Mr.Akshit Shah i/b. Ms.Preeti H. Gada , Advocate for the Applicant.

Mr.S.R.Gaud, Advocate for the Respondent No.1.

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

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CORAM : A.M.BADAR J.

DATED : 20th DECEMBER 2019.

P.C. :

1 By this petition, the petitioner/husband is challenging the Order passed by the learned Additional Sessions Judge, in

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) thereby rejecting his challenge to the Order passed by the learned trial Magistrate awarding interim maintenance and other interim relief to the respondent/wife.

2 Heard the learned Counsel appearing for the petitioner/respondent. He argued that the aggrieved person i.e. wife is working as Fitness Trainer and in fact earning more than the husband. The husband is earning paltry sum of Rs.25,000/- per moth which is now increased up to Rs.30,000/- He is being maintained by his own parents and, therefore, he is not liable to pay maintenance to his wife.

3 The learned Counsel appearing for respondent/original applicant opposed the petition by supporting the impugned Order.

4 I have considered the submissions so advanced and also perused the material placed on record.

5 The aggrieved person/respondent herein preferred an application under Section 12 of the D. V. Act and in that proceedings, after hearing both the parties, the learned trial Magistrate was pleased to award interim financial assistance to the aggrieved person at the rate of 7,000/- per month apart from

directing the respondent No.1/husband to provide separate residence to the wife and in the alternative to pay Rs.5,000/- per month towards rent. This order is confirmed in the appeal and the Appellate Order is being challenged in the petition.

6 It is well settled that quantum of maintenance always rests on the discretion of the learned trial Magistrate. I have perused the pleadings of the parties as well as the Order of the learned trial Magistrate awarding interim maintenance as well as separate residence or in the alternate payment of rent to the aggrieved person. The said Order is passed on sound reasons and the discretion exercised by the learned trial Magistrate cannot be faulted with. Consequently, the impugned Order upholding the grant of interim relief by the learned trial Magistrate of the aggrieved person cannot be faulted with. In the limited jurisdiction of this Court, the said Order cannot be interfered as there is neither procedural irregularity or illegality in the matter. The petition is, therefore, devoid of merits and the same is accordingly disposed of.

7 By Criminal Application No.1 of 2019, the aggrieved person is praying for withdrawal of amount deposited by the petitioner with this Court. The said amount is towards arrears of maintenance ordered by the learned trial Magistrate. The aggrieved person is, therefore, entitled to withdraw the said

amount. The application is, therefore, allowed and the aggrieved person/respondent is permitted to withdraw the said amount. The same is accordingly disposed of.

(A.M.BADAR, J.)