IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5121 OF 2019

ANIL VALJI BHANUSHALI)...PETITIONER

V/s.

MRS.KALPANA ANIL BHANUSHALI & ANR.)...RESPONDENTS

Mr.Aditya Andhorikar i/b. Mr.Jaideep Thakkar, Advocate for the Petitioner.
Mr.A.R.Kapadnis, APP for the Respondent – State.
Mr.A.O.Shukla, Advocate for the Respondent No.1.

CORAM : A. M. BADAR, J.

DATE : 19th DECEMBER 2019

ORAL JUDGMENT :

1 By this petition, the petitioner/original husband in proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the D.V.Act for the sake of brevity) initiated by the respondent no.1/wife is

challenging the appellate order passed by the learned Additional Sessions Judge, Greater Mumbai, thereby rejecting his appeal under Section 29 of the D.V.Act. The learned trial Magistrate, by an order dated 16th July 2018 passed in C.C.No.45/DV/2017 was pleased to grant interim maintenance at Rs.15,000/- per month to the respondent no.1/wife/original complainant and that of Rs.7,000/- per month to her son from the date of application till adjudication of the said application. This order is confirmed in appeal by the learned Additional Sessions Judge. That is how, the petitioner/husband as preferred the instant petition.

2 Rule. Rule returnable forthwith. Heard finally.

3 The learned counsel appearing for the petitioner/husband vehemently argued that the petitioner is educated only upto S.S.C. and is working as an employee with a firm and thereby earning salary of Rs.15,000/- per month. By relying on the judgment of the Hon'ble Supreme Court in the matter of **Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee**

<u>Nandy</u>[1], he submitted that maintenance cannot exceed 25% of net salary of the husband and the amount of permanent alimony is required to be befitting the status of the parties and capacity of the spouse to pay maintenance. With this, it is argued that the impugned order suffers from perversity as well as illegality. My attention was also drawn to the copies of Income Tax Return of the petitioner/husband reflecting his income in the range of Rs.62,413/- to about 4 lakh in past few years. As against this, the learned counsel for the respondent/wife/aggrieved person by drawing my attention to the Agreement dated 25th October 2007 contended that the husband is operating a Tax Consultancy Firm by engaging Chartered Accountant in the premises owned by him as well as his father and brother. It is further argued that even returns in the name of the wife used to be filed through the firm of the petitioner though she was not earning anything, she being a housewife. It is further submitted that even when the wife and son used to reside with the petitioner, the petitioner had admitted his son to a school charging yearly fees of Rs.89,270/-. Therefore, in submission of the learned counsel for the respondent/wife, no

1 Civil Appeal No.5369 of 2017 decided on 19th April 2017

interference is required in the impugned order in writ jurisdiction of this court.

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

5 An application under Section 12 of the D.V.Act was filed by the respondent/wife against the petitioner and his parents alleging domestic violence. It is averred in the said application that from 2nd June 2016, the respondent/wife/aggrieved person was driven out of the house and since then, she as well as her son are staying at the mercy of her parents and brothers. In the application under Section 12 of the D.V.Act, the wife has categorically averred that the petitioner is doing business in the name and style of "Anil Tax Consultant" and is operating his office from Siddhivinayak Building, Shop No.13, Ware House Complex, Jalaram Market, Jalaram Plaza, Plot No.1A, Sector-19/C, Vashi. It is pleaded in the said application that the office premises are 2000 and 800 square feet. It is further pleaded that the husband

is earning Rs.10 lakh per month and his firm is having 25 employees apart from a full time Chartered Accountant.

6 After considering the averments made in the application, so also contentions raised in reply Exhibit 12 filed by the petitioner, the learned trial Magistrate was pleased to award interim maintenance at the rate of Rs.15,000/- per month to the wife and at the rate of Rs.7,000/- per month for the son of the couple from the date of the application till disposal of the matter. The learned trial Magistrate was pleased to observe that the wife has filed documents along with Exhibit 15 showing that the husband is working as a Tax Consultant and he is running Anil Consultancy Services along with his brother and father. The learned trial Magistrate has taken into account the documents of purchase of office premises by the husband as well as brother of husband and father. With this, the learned trial Magistrate presumed that the husband must be earning more than Rs.50,000/- per month. The order of the learned trial Magistrate reflects that keeping in mind inflation, daily needs and other

requirements, the quantum of maintenance came to be fixed. In the appeal, the learned Appellate court re-appreciated the material on record and came to the conclusion that there is no illegality in the impugned order. The appeal is under Section 29 of the D.V.Act and was accordingly dismissed.

7 The petitioner/husband has invoked writ jurisdiction of this court in assailing the concurrent finding of facts recorded by both courts below. This court, in its writ jurisdiction, has limited role to play in the matter. It has to examine whether the impugned order suffers from procedural irregularity, perversity or illegality. Similarly, it is well settled that quantum of maintenance always rests in discretion of the learned trial Magistrate. Unless and until it is demonstrated that the discretion is exercised arbitrarily, capriciously or illegally, the amount of maintenance fixed by the learned trial Magistrate cannot be varied.

8 In the case in hand, the respondent/wife/aggrieved person came up with a specific case of her husband running Tax

Consultancy from the premises owned by him as well as his relatives. Agreement dated 25th October 2007 by which commercial premises were purchased by the petitioner/husband and his relatives is placed on record and the said agreement shows that commercial premises admeasuring more than 1145 square feet were purchased under the said agreement. Map of the purchased premises shows that there are office blocks so also other area purchased under the Sale Deed. It is also seen from the record that though the respondent/wife was not doing any business and she was a homemaker, her Income Tax Returns for the Assessment Year 2013-14 onwards upto the year 2016-17 came to be filed showing that she was earning income. Those tax returns were filed by showing her address at Jalaram Plaza where the shop blocks were purchased under the registered Sale Deed by the husband and his relatives. Email address of the respondent/wife/aggrieved person is shown to be that of father of the petitioner/husband. This material unerringly indicates that Tax Consultancy Services is being operated by the petitioner/ husband and his relatives from the premises purchased by them. It is also borne from the record that when the wife along with her son was staying with the petitioner/husband, he had admitted his child in a school having yearly fees of about Rs.90,000/- per annum. This evidence certainly overweighs the certificates produced by the petitioner showing that he is in employment of some firm earning Rs.15,000/- per month.

9 In the light of this material, it cannot be said that the learned trial Magistrate has exercised his jurisdiction in fixing the quantum of maintenance arbitrarily, capriciously or perversely. Secondly, it cannot be held that that learned Appellate court committed any error in dismissing the appeal.

10 The petition is devoid of merits and therefore the order :

ORDER

i) The petition is dismissed.

ii) Rule is discharged.

(A. M. BADAR, J.)