

Vidya Amin.

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

CRIMINAL WRIT PETITION NO. 4760 OF 2017

Mayank Rajesh Naidu & Anr. ... Applicants
VS.
Megha Mayank Naidu & Ors. ... Respondents

Mr. K.U. Nikam, Advocate for the applicants.

Ms. Megha S. Bajoria, Advocate for respondent No. 1.

Mr. Naveen Kumar Sharma, Advocate for respondent nos. 3 and 4.

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: 25th February, 2019

P.C. :

Rule. Rule made returnable forthwith. By consent, the Writ Petition is heard finally and decided at the stage of admission.

2. The petitioner No. 1 is husband, petitioner No. 2 is mother-in-law and they have challenged the order dated 26th September, 2017 passed by learned District Judge-4 and Additional Sessions Judge, Pune in Criminal Appeal No. 386 of 2017 and so also the order dated 17th July, 2017 Exhibit 5 in Criminal Miscellaneous Application No. 734 of 2016 passed by the learned Joint Judicial Magistrate, First Class, Cantonment Court, Pune.

3. The respondent/wife has moved an Application under section 23 of the Protection of Women from Domestic Violence Act, 2005 and claimed Rs.80,000/- per month as interim maintenance. The learned Judicial Magistrate First Class while deciding this Application, directed the husband to pay interim maintenance amount of Rs.30,000/- per month to the wife and daughter. The said order was challenged before the by the petitioners before the learned Sessions Court. The learned District Judge-4 and Additional Sessions Judge, Pune by order dated 26th September, 2017 in Criminal Appeal No. 386 of 2017 has reduced the interim maintenance from Rs.30,000/- to Rs.20,000/- per month.

4. The learned counsel for the petitioners submitted that the petitioner No. 1/husband is drawing salary of Rs.25,000/- per month and he has produced salary certificate issued by his company. The learned Judges of the trial Court and Sessions Court have gone wrong in not appreciating that the petitioner No. 1/husband is drawing salary of Rs.25,000/- per month, then how he can be directed to pay interim maintenance of Rs.20,000/- per month to his wife and daughter. The learned counsel pointed out the admission given in the cross-examination by the

respondent/wife where she has admitted that she is drawing annual salary of Rs.6,50,000/- plus HRA. She has admitted that when she filed the reply earlier, she was not employed. The learned counsel has submitted that the respondent/wife is also earning. She is B-Tech and drawing annual salary of Rs.6,50,000/- including HRA, which should ought to have been taken into consideration and the amount fixed of interim maintenance of Rs.20,000/- is excess and should be reduced. The learned counsel submitted that the petitioner No. 1/husband has responsibility of his old parents and now the applicant/accused is only drawing Rs.25,000/- per month.

5. Per contra, the learned counsel for the respondents has supported the orders passed by the Judicial Magistrate First Class and learned District Judge-4 & Additional Sessions Judge, Pune.

6. Considered the submissions, so also the evidence produced before this Court and the impugned orders. Admittedly, both the parties are B-Tech and are employed. The respondent/wife has admitted that she is drawing salary of more than Rs.50,000/- per month and she is getting HRA. She is at present staying with her

parents along with her daughter. The daughter is approximately 5 years old as on today. The petitioner no.1/father has to bear the responsibility of his daughter's livelihood and education. The view taken by the learned Judicial Magistrate First Class and learned District Judge-4 & Additional Sessions Judge, Pune that the petitioner No. 1 in the beginning was drawing Rs.90,000/- per month and when he left the job, it cannot be accepted that his salary is only Rs.25,000/-. The learned District Judge has taken into account the possibilities of his other earning and has passed the correct order. The interim maintenance which was granted earlier of Rs.30,000/- is also reduced to Rs.20,000/-. In view of this, Writ Petition is dismissed.

7. The Application pending before the Judicial Magistrate First Class, Pune is expedited and is to be heard within one year.

(MRIDULA BHATKAR, J.)