

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.691 OF 2020

IBRAHIM MOHD. YUSUF KHAN ... PETITIONER.
VERSUS
MEHJABIN IBRAHIM KHAN & ANR. ... RESPONDENTS.

Mr.Shivaji K. Farakate, Advocate for the Petitioner.

Miss Disha Karambar-Mulgaonkar, Advocate i/b Disha Karambar and Associates for Respondent No.1.

Mr.R.M.Pethe, Additional Public Prosecutor for the State-
Respondent no.2.

CORAM : A. M. BADAR, J.

DATE : 6TH MARCH 2020.

P.C.:

1. This is a petition by the husband challenging order dated 04.12.2019 passed by the learned Sessions Judge, Dindoshi, Mumbai, in an appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005, (to be referred to as Domestic Violence Act for the sake of brevity) thereby maintaining Order dated 08.01.2018 passed

by the learned Metropolitan Magistrate, Mumbai awarding Rs.10,000/- per month towards maintenance and rent to the aggrieved person apart from issuing protection order under Section 18 of the Domestic Violence Act.

2. Heard learned counsel appearing for the petitioner/ original respondent/husband. He argued that the petitioner married the aggrieved person on 27.3.2015. It was a second marriage. From first marriage the petitioner is having 4 School and College going children. It is further argued that one of the child is disabled. Learned counsel for the petitioner further submitted that the petitioner is having responsibility to maintain his mother. According to the petitioner, the aggrieved person is in the employment and she has suppressed the fact that she is gainfully employed. It is further urged that the take home salary of the petitioner is more than Rs.10,000/- and in this view of the matter, the award of maintenance and rent at the rate of Rs.10,000/- per

month is exorbitant and needs to be scaled down.

3. I have considered the submissions and also the material placed on record including the Order passed by the learned trial Magistrate as well as order of the appellate court rejecting the appeal challenging interim maintenance.

4. Scope for interference of this court in such matter is laid down in the matter of **Abhijit Bhikaseth Auti Vs. State of Maharashtra and Another, reported in 2009 Cr.L.J.889**, of the learned single Judge of this court. The relevant portion reads thus;

25(iii) An appeal will also lie against orders passed under sub section 1 and sub section 2 of the section 23 of the said Act which are passed by the learned Magistrate. However, while dealing with an appeal against the order passed under [section 23](#) of the said Act, the Appellate Court will usually not interfere with the exercise of discretion by the learned Magistrate. The appellate Court will interfere only if

it is found that the discretion has been exercised arbitrarily, capriciously, perversely or if it is found that the Court has ignored settled principles of law regulating grant or refusal of interim relief.

5. In the case in hand, the petitioner/husband is an employees of the Municipal Corporation. His monthly salary is Rs.36,173/-. Statutory deduction from that salary as seen from the pay slip are Rs.200/- for the provisional tax and Rs.616/- towards income tax. Other deductions can not be looked into while assessing the quantum of maintenance.

6. Learned trial Magistrate while awarding interim maintenance has held in paragraph 11 of the order dated 8.1.2018 as below:

11. The applicant did not have any source of income when she was living with the respondent. The alleged photographs are not sufficient to hold that she is earning. Therefore, the aggrieved person is entitled

the interim reliefs against the respondents. However, there is no evidence on record that the respondent no.1 is earning more than Rs.36,173/- per month from his salary as per salary certificate. It appears that both the parties belongs to middle class family. Respondent no.1 has to maintain herself, his four children and old age mother. Hence, if the respondent no.1 directed to pay Rs.10,000/- per month towards maintenance and rent then the respondent no.1 can easily pay the said amount and the applicant can lead the life. Hence, point No.1 is recorded in partly affirmative and 2 is recorded in the affirmative and to answer point no.3 following order is passed.

ORDER

- i) An application under section 23 of Protection of Women from Domestic Violence Act, 2005 is allowed as under;
- ii) The respondent no.1 is directed to pay Rs.10,000/- per month towards maintenance and rent to Mrs. Mehejabin Ibrahim Khan from the date of application.

7. While deciding the appeal, the learned appellate court has found that the discretion exercised by the learned trial Magistrate while awarding maintenance and rent at the rate of Rs.10,000/- per month is just, proper and legal. Following are the observations of the learned appellate court found in paragraph 29 while deciding the statutory appeal.

29. Coming to the maintenance allowance, it finds that original respondent Mr.Ibrahim has responsibility of four children most of them school going, old aged mother and the wife and his salary appears to be near about Rs.36,000/-to Rs.37,000/-, except the compulsory deduction. The other deductions are voluntary. In aforesaid circumstances, if over all his responsibilities are taken into consideration alongwith the dependency of his wife and her separate residence and her residing at her parentage due to the domestic violence, looking to the costs of the maintenance in Mumbai City, it is humble opinion of this Court, it is just and

proper to grant the interim monetary relief of Rs.10,000/- not less or more. It finds that the same is granted by Ld.Metropolitan Magistrate. Thus, same appears to be just and proper. Court records its such affirmative findings to the points Nos.2 and 3. In such circumstances, the appeal does not stand on merits. Hence, the Court passes following order.

8. I see no infirmity in the impugned order which is clearly a discretionary order awarding and confirming interim maintenance and rent to the aggrieved person. Alleged gainful employment of the aggrieved person is held not to be proved at the interim stage. The photographs with other persons are held not to be sufficient to hold that the respondent/wife is gainfully employed. The petition as such devoid of merits and the same is dismissed.

(A. M. BADAR, J.)