

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.681 OF 2017

ABDUL RAHIM RAHEMAN SHAIKH)...PETITIONER

V/s.

SAIDA ABDUL RAHIM SHAIKH AND ANR.)...RESPONDENTS

Mr.Satyajeet Rajeshirke, Advocate for the Petitioner.

Mr.A.R.Patil, APP for the Respondent – State.

Mr.Vithal Dahake, Advocate for Respondent No.1.

CORAM : A. M. BADAR, J.

DATE : 3rd JANUARY 2020

ORAL JUDGMENT :

1 Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2 The learned counsel for the petitioner/husband argued that the learned courts below totally erred in assessing the amount

of maintenance in the wake of earnings of the respondent/wife. He submitted that the respondent/wife is getting income of Rs.1800/- by way of pension and rent from tenants, where as the petitioner/husband is getting pension of Rs.1700/-. He is aged about 65 years.

3 As against this, the learned counsel for the respondent/wife argued that the petitioner/husband was working as a driver. He is a retired driver having been superannuated from the services of State Transport Corporation. Therefore, the impugned order is correct and infact the maintenance is required to be enhanced to the original award of Rs.5,000/- per month.

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

5 The respondent/wife moved an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005, claiming reliefs from the petitioner/husband. That

application came to be allowed partly by directing the petitioner/husband to pay an amount of Rs.5,000/- per month towards maintenance to the aggrieved person. This order dated 8th July 2013 passed by the learned Judicial Magistrate First Class, Solapur, came to be impugned in appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005, by the petitioner/husband. After perusal of the record and proceedings, the learned Additional Sessions Judge was pleased to allow the appeal partly by directing the petitioner/husband to pay maintenance at Rs.1,000/- per month from the date of main application. This appellate order is impugned in the instant petition.

6 After evaluation of evidence adduced by the parties, following are the observations of the learned Appellate Court found in paragraph 10 of the impugned judgment and order dated 18th March 2015 :

“10 The opponent/wife also admitted in her cross-examination that she has retired from Bidi work and she is also getting pension of Rs.900/-

p.m. Besides that she is also getting Rs.900/- towards rent from the tenants. In such circumstances, it appears that the opponent/wife is having some source of income. Thus, considering the evidence on record, it clearly appears that appellant/husband is now aged about 65 years and getting pension of Rs.1700/- p.m. In such circumstances, the maintenance allowance of Rs.5000/- p.m. awarded by trial court appears to be exorbitant, unreasonable and improper. Therefore, the impugned order has to be modified. The points are answered accordingly and following order is passed :

ORDER

- 1 The appeal is partly allowed.
- 2 The impugned order dated 8.7.13 passed by JMFC Solapur in Cri.M.A.No.4/13 is modified and instead of maintenance allowance of Rs.5,000/- p.m. the appellant/husband is directed to pay maintenance allowance of Rs.1,000/- p.m., only from the date of main application.
- 3 The impugned order on other aspect is maintained.
- 4 The parties to bear their own costs.

5 R and P of Cri.M.A.No.4/13 along with copy of this judgment be sent to lower court.”

It is, thus, clear that the respondent/wife is getting pension of Rs.900/- apart from rent at the rate of Rs.900/- per month from the tenants. As against this, evidence on record, as evaluated by the learned Appellate Court shows that the petitioner/husband is getting pension of Rs.1700/- per month. The learned counsel for the petitioner/husband has fairly submitted that even today the petitioner/husband is getting pension of Rs.1860/- per month.

7 Quantum of maintenance always lies in discretion of the learned trial Magistrate. The said discretion can be interfered with only when it is shown to be exercised arbitrarily and capriciously. The learned Appellate Court gave positive finding on this aspect and assessed the maintenance at Rs.1,000/- per month from the date of main application.

8 To my mind, when the income earned by the respective parties are considered, it is apparent that even the

learned Appellate Court has not exercised the discretion, in awarding maintenance, judiciously. When the wife i.e. the aggrieved person, as seen from the record, is getting monthly income of Rs.1800/-, as against that of Rs.1700/-, which is being earned by the husband by way of pension, award of maintenance of Rs.1000/- per month to the wife cannot be said to be legal and proper exercise of discretion. Ultimately, as on date, the husband is more than 65 years of age. Therefore, the just and proper maintenance payable by him would be an amount of Rs.750/- per month. Therefore, the order :

ORDER

- i) The petition is allowed partly.
- ii) The impugned order dated 18th March 2015 passed by the learned Additional Sessions Judge, Solapur, is quashed and set aside.
- iii) The petitioner/husband is directed to pay maintenance of Rs.750/- per month to the respondent/wife from the date of main application.

- iv) Rule is made absolute in above terms.
- v) The petition stands disposed off accordingly.

(A. M. BADAR, J.)