

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1028/2019

AMRUT VIJAY SHINDE & ORS. PETITIONER.

VERSUS

ASHWINI AMRUT SHINDE & ANR. RESPONDENTS.

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Ms Yogini A. Ugale, Advocate for the petitioner.

Mr.Prashant Pandey a/w Vijaylaxmi Shetty, for respondent no.1.

Mr.S. V. Gavand, APP for State-respondent no.2.

CORAM : A. M. BADAR, J.

DATE: 4TH FEBRUARY 2020.

ORAL JUDGMENT:

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

2. This is a petition by the original respondents viz. husband and in-laws of the aggrieved person/respondent no.1 herein for challenging order dated 1.2.2019 passed by the

learned Additional Sessions Judge in Criminal Appeal bearing No.725/2018 under Section 29 of the Protection of Women from Domestic Violence Act, 2005, (the D.V. Act for brevity) whereby appeal filed by aggrieved person came to be allowed by enhancing interim maintenance from Rs.9000/- p.m to Rs.15,000/-p.m.

2. Heard learned counsel appearing for the petitioners/original respondents. She took me through order dated 24.03.2018 as well as 28.9.2018 passed below Exhibit 3 by the learned trial Magistrate and argued that the aggrieved person is residing with the petitioner Nos.2 and 3/original respondents and while deciding appeal, the learned appellate court has considered the material which were not forming part of the proceedings before learned Metropolitan Magistrate. She argued that the learned appellate court has considered the vouchers of A.S. Sports Academy in respect of summer camps for enhancing interim maintenance granted by the learned Magistrate. Therefore, in submission of learned

counsel for the petitioners, the impugned appellate order needs to be quashed and set aside and that which is passed by the learned Metropolitan Magistrate needs to be maintained.

3. As against this, the learned counsel for respondent/aggrieved person, drew my attention to the submissions made by the learned counsel for the petitioners before learned appellate court and argued that relying on those submissions, the learned appellate court has enhanced the maintenance.

4. I have considered the submissions so advanced and the material placed on record including the impugned order.

5. By considering salary slip of 'Vishwajyot High School' learned trial Magistrate considered monthly income of the petitioner no.1 herein/original respondent no.1 to be of Rs.19,829/-. On the basis of this income, it was held that, respondent no.1 herein/aggrieved person is entitled for

monthly maintenance of Rs.9000/- p.m.

6. Feeling aggrieved by the Award of interim maintenance at Rs.9000/- p.m., aggrieved person challenging that order in Appeal u/s 29 of the D.V. Act. It was pointed out that Returns filed were that of ITR-3 form which is not for salaried person. During the course of argument, on behalf of the petitioner no.1 herein/original respondent, it was submitted that from June 2018 he got a private job in Kirti College and is getting approximately salary of Rs.25,000/- p.m. During the course of argument made on behalf of the petitioner no.1 herein/original respondent no.1 so also considering the fact that the petitioner no.1 herein is also getting some amount by imparting training in the summer camps, interim maintenance is enhanced from Rs.9000 p.m. to Rs.15,000/- pm.

7. Perusal of the material placed on record, coupled with the income pointed out by the petitioner no.1 herein, it

can not be said that the discretion in enhancing maintenance exercised by the learned appellate court is perverse, arbitrary or capricious. Same is based on the basis of material on record and income which was used to be earned by petitioner no.1 as was informed to the court by the learned counsel for the husband.

8. In the result, petition fails, therefore, dismissed.

9 Learned trial Magistrate is requested to adhere to the time limit prescribed by the D.V.Act, 2005 for concluding proceedings u/s 12 of the D.V.Act.

10. Needless to mention that observations made in this order are prima facie in nature, and shall not have bearing on the trial.

(A. M. BADAR, J.)

