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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 3608 OF 2018**

Rajendra Laxman Gilbile & ors. .. Petitioners
VS.

Sujata Rajendra Gilbile & anr. .. Respondents

Mr. Vilas B. Tapkir for the petitioners.

Ms. Kanchan Pawar for respondent No.1.

Mr. N.B. Patil, APP for respondent No.2 – State.

CORAM : M.S.KARNIK, J.

DATE : MARCH 25, 2021

P.C.:-

Heard learned counsel for the petitioner No.1 – husband.

2. The Petition is filed challenging the order passed by the Appellate Court under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the said Act' for short). The appeal was filed against the order passed in the D.V. Petition (M.A.No.110/2010). The respondent No.1 – wife filed an application under Section 12, 18, 19, 20 and 22 of the said Act for maintenance. The trial Court granted maintenance of Rs.2,500/- to the respondent No.1 – wife and Rs.2,500/- each to the two children. The trial Court further directed that the petitioner No.1 – husband shall not restrain the respondent No.1 – wife from entering in the matrimonial home if she wishes or else the petitioner No.1-husband to pay Rs.3,000/- per month to the respondent No.1 – wife towards the rent.

3. The order passed by the trial Court dated 1/3/2011 granting maintenance was challenged in appeal by the petitioner No.1- husband. The Appellate Court rejected the appeal.

4. It is the contention of learned counsel for the petitioner No.1- husband that the order passed by the trial Court is an ex parte order and he was not given a opportunity to present case before the trial Court. He further submits that the respondent No.1 - wife was working and she is having independent source of income of her own, despite which the maintenance is granted. Learned counsel submits that the petitioner No.1- husband has to look after his parents who are old and his income is not sufficient to maintain himself and his parents, which aspect has not been considered by the Courts below while granting maintenance of Rs.7,500/- in addition to the rent of Rs.3,000/-. He submits that the trial Court was not justified in taking into consideration the transactions produced by the respondent No. 1- wife indicating that the petitioner was to get sizable amount of his share from the immovable property which is at his native place.

5. Learned counsel for the respondent No.1 - wife appointed through Legal Aid invited my attention to the findings of the trial Court as well as the Appellate Court. She submitted that the amount of maintenance granted by the trial Court is reasonable. Further she submits that there is no material to show that the wife is working and in fact has no source of livelihood.

6. I have heard learned counsel for the parties and gone through the orders passed by the Courts below. The petitioner No.1 – husband is working as Ward Boy with the Y.C.M. Bhosari Hospital, Bhosari and admittedly earning a gross salary around of Rs.25,000/- per month. It is observed by the Courts below that the petitioner No.1 – husband owns immovable properties at his native in the name of his family members and the transactions which are produced on record discloses that the petitioner No.1 – husband is supposed to get sizable amount of his share. There is no material on record to suggest that the respondent No.1 – wife is having any source of income.

7. In this view of the matter, if the Courts below awarded the maintenance of Rs.7,500/- to the respondent No.1 – wife and her two children apart from the rent of Rs.3000/- in case she is not staying with the petitioner No. 1- husband, the same cannot be said to unreasonable. I do not find any perversity with the orders passed by the Courts below.

8. Learned counsel for the petitioner No. 1 – husband submits that so far as Criminal Case filed by the respondent No.1 – wife under Section 498-A of the Indian Penal Code is concerned, the petitioner No.1 – husband is acquitted.

9. In my opinion, there was no necessity for the trial Court in the order dated 1/3/2021 to have passed the order in terms of

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Clause (5). Clause (5) of the operative order of the trial Court dated 1/3/2011 is quashed and set aside. Otherwise I do not find any reason to interfere with the orders passed by the Courts below. The Petition is rejected.

(M.S.KARNIK, J.)