

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 6025 OF 2019

NIDHI MANARI

) PETITIONER

V/S.

SARATH MANARI & ORS.

) RESPONDENTS

* * * *

Ms. Rupali Thosar i/by. Mr. D.M. Thosar, Advocate for
the petitioner.

Mr. Sarath Manari Gopinathan, respondent no.1 appearing
in person.

Ms. M.R. Tidke, APP for State-respondent no.3.

Mr. Shreeram Shirsath, a/w. Mr. Amandeep Singh Sra,
Advocate for respondents no.4 and 5.

CORAM : SANDEEP K. SHINDE, J.

Reserved On : 23rd November, 2021.

Pronounced On : 8th December, 2021.

P.C. :

1. This petition under Article 227 of the
Constitution of Indian, assails the order dated 31st August,

2019, by which the learned Additional Sessions Judge, Thane, declined to enhance the, interim maintenance sought by the petitioner under the Protection of Women from Domestic Violence Act, 2005 ("D.V. Act" for short) and confirmed the order granting interim maintenance, passed by the learned Judicial Magistrate First Class, CBD, Vashi.

FACTS ARE AS UNDER :

2. Petitioner instituted D.V. complaint in the Court of Judicial Magistrate First Class, Vashi for the orders and reliefs under the D.V. Act against, her husband, who is the respondent no.1 herein. Pending complaint, she moved an application under Section 23(1) of the D.V. Act, for interim maintenance, compensation and protection order. The learned Judicial Magistrate First Class, directed the respondent to pay interim maintenance at the rate of Rs. 10,000/- per month to the petitioner and Rs.7,000/- to her daughter, from the date of the application on/or before the fifth day of the month, besides arrears of maintenance, within two months from the date of the order. In so far as,

the other reliefs i.e. interim compensation and protection are concerned, the learned Judicial Magistrate First Class observed that, these reliefs would be considered at the later stage after evidence is led by the parties. Whereafter, the petitioner filed an appeal under Section 29 of the D.V .Act, seeking enhancement of amount of maintenance.

ESSENTIAL FACTS :

3. Petitioner married to the respondent in March, 2015 and daughter was born out of the said wedlock on 17th January, 2017. Her case is that, the respondent suppressed his second marriage, which was subsisting when she married to him. She was subjected to a physical, emotional and economic abuse by the respondent, besides his extra-marital affairs. She was driven out of the house on 13th July, 2017 and since then, she has been living at her parents house. Her husband is, Commander in Navy and his salary was around Rs.1,60,000/- per month. Petitioner would therefore claim, 40% of Rs.1,60,000/- as maintenance, for herself and her daughter.

4. It may be stated that, before the trial Court, when application was moved for interim maintenance, neither the petitioner had produced Salary Certificate of her husband, nor the Learned Magistrate, had enquired into the salary of the respondent, nor directed the respondent to produce it.

5. It may be stated, that the petitioner is Masters in Business Administration, from the University at Belgium.

6. Indisputably, after filing the complaint under the D.V. Act, the petitioner had claimed maintenance allowance under the Navy Act, 1957, since at the material time, her husband was working in Indian Navy. Pursuant thereto, in July, 2018, the Competent Authority granted maintenance Rs.30,000/- per month under Section 31 of the Navy Act, 1957 as “administrative measure”.

6A. It appears, the petitioner had not disclosed to the Competent Authority of Indian Navy, that she has been granted interim maintenance at the rate of Rs.17,000/- per

month by the Judicial Magistrate First Class, vide order dated 25th April, 2018.

7. Be, that as it may, the learned Appellate Court, upon taking into consideration, that the petitioner was granted maintenance at the rate, Rs.30,000/- per month, by the Competent Authority of the Indian Navy, in addition to Rs.17,000/-, thought it fit, not to enhance the interim maintenance amount. In the consequence, the Appeal was dismissed on 31st August, 2019. This order is assailed herein under Article 227 of the Constitution of India.

8. It may be stated that, pending petition, petitioner impleaded Chief of Naval Staff, New Delhi and Flag Officer Commanding in Chief, Head Quarter-Mumbai, as party respondents no.4 and 5 and sought following reliefs, against them;

“(k) That the Navy be directed to pay the outstanding amount to the petitioner and assist in executing the warrants.

(l) That the Navy be directed to hold on to the retirement benefits of the Respondent no.1 till the final disposal of this petition.

OR

In the alternative pay half of the retirement benefits to the petitioner thereby securing further maintenance to be paid by the Respondent No.1.”

9. It may be noted that, the respondent retired from the Indian Navy on 10th July, 2021 and in view of this fact, the petitioner would not receive maintenance from the Indian Navy, which she was receiving since July, 2018.

10. I have heard the Counsel for the petitioner and respondent in person. Perused the petition and the documents annexed to it; as also the three Affidavits-in-reply filed by the respondent.

11. In the first place, when interim maintenance was claimed, the Salary Certificate of the respondent was not before the learned Judicial Magistrate First Class. Secondly, now the respondent has retired from the Indian Navy and therefore the petitioner would not receive maintenance from the Navy which she was receiving since July, 2018. In these changed circumstances, I deem it appropriate to relegate, the petitioner to the trial Court for

seeking alteration of order under Section 25(2) of the D.V. Act.

12. In consideration of the facts of the case, in my view, the learned Appellate Court has not committed error in exercise of the jurisdiction and therefore, no interference is called for in the impugned order.

13. It may be stated that, this Court has not addressed petitioner's claim for enhancement of maintenance, on merits, but in changed circumstance, simply relegated the petitioner to the trial Court. In the aforestated facts of the case, if an application is moved by the petitioner seeking alteration of maintenance order, the learned Magistrate shall decide the said application on its own merits, without being influenced by the order of this Court.

14. All reliefs sought against the respondents no.4 and 5, are expressly kept open.

15. The Writ Petition is disposed of in the aforesaid terms.

NEETA
SHAILESH
SAWANT

Digitally
signed by
NEETA
SHAILESH
SAWANT

Date:
2021.12.08
16:45:20
+0530

(SANDEEP K. SHINDE, J.)