

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.87 OF 2022

**SACHIN ALIAS SHAM RAMDAS PAGAR
VERSUS
MADHURI ALIAS TWINKLE SACHIN PAGAR**

....
Mr. Chetan H. Deshmukh, Advocate for the Petitioner
Mr. Ujwal S. Patil, Advocate for the Respondent
....

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 26 SEPTEMBER 2022

PER COURT:-

. Heard finally with the consent of both the sides at admission stage.

2. The petitioner is assailing the order passed by the Additional Sessions Judge-3, Dhule in criminal appeal No.56/2019, whereby his appeal came to be dismissed in his absence.

3. Heard Mr. Chetan Deshmukh, learned counsel for the petitioner and Mr. Ujwal Patil, learned counsel for the respondent.

4. Perused the impugned judgment and order passed by the Additional Sessions Judge, Dhule in criminal appeal No.56 of 2019 dated 25.03.2021.

5. Mr. Chetan Deshmukh, learned counsel for the appellant vehemently submitted that the application for interim maintenance filed by the respondent/wife before the Judicial Magistrate, First Class, Dhule under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the D.V Act' for the sake of convenience) was contested by the present petitioner/husband. That application was partly allowed, whereby the petitioner/husband was directed to pay interim maintenance @ Rs.5,000/- per month to his wife/respondent. Feeling aggrieved by the impugned order of interim maintenance passed by the learned Magistrate, under the D.V. Act proceedings, the petitioner/husband has preferred criminal appeal No.56 of 2019 before the Sessions Court at Dhule under provisions of the D.V. Act.

6. Mr. Deshmukh, learned counsel for the petitioner submitted that the criminal appeal came to be filed on 30.09.2019, and the same was fixed for hearing on

25.03.2021. There was Covid-19 pandemic. There was complete lock down in the entire State. As such, the petitioner husband could not attend the said proceedings. The proceedings of criminal appeal No.56 of 2019 came to be decided in his absence and order passed by the learned Magistrate under the D.V. Act proceedings came to be upheld. He submitted that the learned Additional Sessions Judge-3, Dhule has not considered the various issues relating to the salary of the present petitioner and dependency factor and confirmed the order of interim maintenance passed by the learned Magistrate @ Rs.5,000/- per month under the D.V. Act. He submitted that at present the petitioner is drawing salary @ Rs.11,247/- per month. If the salary per month drawn by the petitioner is considered, it is difficult for him to pay interim maintenance @ Rs.5,000/- per month to his wife/respondent. He, therefore, urged to reduce the amount of maintenance.

7. Mr. Ujwal Patil, learned counsel for the respondent/wife supported the order of interim maintenance and the impugned judgment and order passed by the learned Additional Sessions Judge-3, Dhule in criminal appeal No.56 of 2019. He submitted that there was no Covid-19 pandemic

when the appeal was decided by the Additional Sessions Judge-3, Dhule. He submitted that the conduct of the petitioner/husband may be taken into consideration. He was not due diligent in prosecuting the appeal. He invited my attention to the observations made by the learned Additional Sessions Judge-3, Dhule in para 8 of the impugned judgment and order dated 25.03.2021, and submitted that, the present petitioner was not prompt in prosecuting the appeal. Whereas, the wife/respondent was prosecuting the appeal in order to secure her interest of interim maintenance. He submitted that order of interim maintenance passed by the learned Magistrate and confirmed by the appellate authority to pay interim maintenance @ Rs.5,000/- per month is very much reasonable having regard to the salary of the present petitioner. He submitted that there is rise in inflation rate and by taking into considering all these aspects, the appellate authority has upheld the order of interim maintenance. No interference is called for.

8. I have considered the submissions of both the sides. Perused the documents and papers produced by the petitioner along with petition as well as the recent salary certificate marked as 'X' for identification.

9. It appears from the record that respondent/wife has filed proceedings under the D.V. Act vide criminal M.A. No.562 of 2018 before the Judicial Magistrate, First Class, Dhule, and sought interim interim maintenance under the provisions of D.V. Act. That application was contested by the present petitioner/husband. After considering the submissions of both the sides and documents on record, the learned Magistrate was pleased to grant interim maintenance @ Rs.5,000/- per month to the wife/respondent.

10. The order of interim maintenance was challenged by the present petitioner/husband before the Sessions Court, Dhule by preferring criminal appeal No.56 of 2019. The appeal was filed on 30.09.2019. It was listed before the learned Additional Sessions Judge-3, Dhule on 25.03.2021 for hearing and final disposal. It appears from the order passed by the learned Additional Sessions Judge-3, Dhule, more particularly para 8, that on the date of hearing of the said criminal appeal, the petitioner and his advocate remained absent. The matter was roll over to the afternoon session. Whereas, the respondent/wife and her advocate were present. Till 4.30 p.m., the petitioner and his advocate

did not turn up, and ultimately, the learned Additional Sessions Judge-3, Dhule decided the criminal appeal on its own merits and upheld the order of interim maintenance passed by the learned Judicial Magistrate, First Class, Dhule.

11. The entire world was facing Covid-19 pandemic, which began in the 3rd week of March, 2020. There was complete lock down initially for about three months from March, 2020. There were restrictions imposed by the Central Government as well as the State Government by issuing various guidelines. The Bombay High Court has also issued an advisory, and thereby the Court functioning of the District Courts were reduced. The Courts were not functioning with full strength because of restrictions of Covid-19 pandemic. There was first waive, then second waive of Covid-19 pandemic, and it was outbreak and so many persons lost their lives in the second waive. The Bombay High Court has also issued various guidelines about restrictions on District Courts and Taluka Courts, and those Courts were not functioning with full working strength.

12. In the above background, we have to see whether the appellate Court/Additional Sessions Judge-3, Dhule has

decided the criminal appeal No.56 of 2019 by giving an opportunity of hearing to both the sides.

13. On going through the impugned judgment and order delivered by the Additional Sessions Judge-3, Dhule in criminal appeal No.56 of 2019, it would clear that on the date of hearing i.e. on 25.03.2021, the petitioner and his advocate marked absent. The criminal appeal No.56 of 2019 came to be decided in absence of the present petitioner and his advocate. As per the letter issued by the Registrar Inspection-1 vide No. Insp-1/90/2021 dated 2nd October 2021, normal physical functioning of all subordinate Courts in Maharashtra, Goa and union territory of Daman and Diu, and Dadra and Nagar Haveli is restored with effect from 04.10.2021 (Letter is made available by the Registrar Administration). Before 04.10.2021, the subordinate Courts in Maharashtra were functioning with 50% strength by following Covid-19 protocol. As such, absence of the appellant and his advocate is certainly justifiable. But the fact remains that criminal appeal No.56 of 2019 came to be decided behind the back of the present petitioner.

14. On going through the impugned judgment and order passed by the learned Additional Sessions Judge-3, Dhule, one would find that there are certain observations in para 15 of the impugned judgment regarding the income of the present petitioner in addition to the agricultural etc. There is no discussion about the salary of the present petitioner and dependency factor coupled with the other grounds raised by the present petitioner in the appeal filed by him under the D.V. Act, though the copy of the appeal is not placed on record as pointed out by Mr. Patil, learned counsel for the respondent/wife.

15. Today, the learned counsel for the petitioner has placed on record the copy of salary certificate of the petitioner/husband, which is marked as 'X' for identification. On going through the salary certificate, it reveals that the petitioner is working with one company Datamatics Globle Services Limited. The pay slip of the petitioner for the month of August, 2022, reveals that he is drawing net salary of Rs.11,247/- per month. The amount of interim maintenance needs to be fixed by the Court by taking into consideration the following factors”

- (i) Status of both the sides.
- (ii) Earning capacity of the husband.
- (iii) Earning capacity of the wife, if any.
- (iv) Dependency factors.
- (v) Standard of leaving, etc.
- (vi) Medical treatment, if any.
- (vii) Education expences.

16. On going through the copy of the impugned judgment and order passed by the learned Additional Sessions Judge-3, more particularly para No.15, there are certain observations about the income of the present petitioner, by salary and by agricultural income. The learned Additional Sessions Judge-3, Dhule has confirmed the observations made by the learned Magistrate while granting the interim maintenance under the D.V. Act proceedings. Whatever grounds raised by the present petitioner in the appeal under D.V. Act, seems to have not been considered appropriately by the Additional Sessions Judge-3, Dhule, apart from the ground of Covid-19 pandemic, which was prevailing deadly in the entire Nation.

17. Be that as it may, it is a fact that criminal appeal No.56 of 2019 is not decided by the Additional Sessions Judge-3, Dhule after giving an opportunity of hearing to the present petitioner. The criminal appeal came to be decided behind back of the present petitioner. The opportunity of hearing needs to be given to the present petitioner so that the petitioner may present his case before the learned Additional Sessions Judge-3, Dhule. Equally the respondent/wife may also present her case by way of rebuttal, and accordingly the learned Additional Sessions Judge-3, Dhule may take decision afresh in the appeal. It would meet the ends of justice. No prejudice would be caused to the either side, if order passed by the Additional Sessions Judge-3, Dhule in criminal appeal No.56 of 2019 under the D.V. Act is set aside and the matter is remanded back to the Additional Sessions Judge-3, Dhule for decision afresh.

18. Having regard to the above reasons and discussion, I am of the considered view that it would not be appropriate for this Court to determine the quantum of interim maintenance in the writ petition. The appellate Court may assess the evidence on record and determine the quantum of interim maintenance by giving an opportunity of being heard

to both the sides. With this, I conclude and proceed to pass the following order:-

ORDER

- (i) The criminal writ petition stands allowed.
- (ii) The impugned judgment and order passed in Criminal Appeal No.56 of 2019 by the Additional Sessions Judge-3, Dhule dated 25.03.2021, is hereby quashed and set aside.
- (iii) Criminal Appeal No.56 of 2019 is restored to the file of Additional Sessions Judge-3, Dhule with same status for hearing of the appeal.
- (iv) The learned Additional Sessions Judge is requested to decide the appeal as expeditiously as possible, within two months from the receipt of writ of this Court, after giving an opportunity of being heard to both the sides.
- (v) Both the parties are at liberty to produce their documentary evidence in support of their respective stand before the Additional Sessions Judge-3, Dhule.

(vi) Both the parties to appear before the Additional Sessions Judge-3, Dhule in criminal appeal No.56 of 2019 on 04.10.2022.

(vii) The criminal writ petition is accordingly disposed of.

(viii) The Registry to communicate this order to Additional Sessions Judge-3, Dhule for information and compliance.

19. The observations made by this Court while deciding this writ petition are *prima facie* and confined to the adjudication of present writ petition only. The learned Additional Sessions Judge-3, Dhule shall not get influenced by the observations made by this Court while deciding this writ petition, and decide the criminal appeal under the D.V. Act on its own merits.

[SHRIKANT D. KULKARNI]
JUDGE

S.P Rane