

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1650 OF 2018

VIJAY S/O SANTUKRAO SONWANE
VERSUS
SEEMA W/O VIJAY SONWANE

...
Mr. Abhishek Kulkarni, Advocate for the petitioner.
Mr. N. N. Bhagwat h/f Mr. C. K. Shinde, Advocate for the respondent.
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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 08.07.2022

ORDER :-

. Heard learned Advocate Mr. Abhishek Kulkarni for the petitioner and learned Advocate Mr. N. N. Bhagwat holding for learned Advocate Mr. C. K. Shinde for the respondent.

2. Present petition has been filed by the husband challenging the enhancement in the maintenance amount to the wife by the revisional Court in the Criminal Revision Application filed by the wife. Present respondent – wife had filed Miscellaneous Application No.195 of 2010 for claiming maintenance under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the “Domestic Violence Act”). Present respondent – wife has also filed Miscellaneous Application No.166 of 2011 for claiming maintenance

under Section 125 of the Code of Criminal Procedure before the learned Judicial Magistrate First Class, Bhokardan, Dist. Jalna. The said application came to be partly allowed on 07.03.2015, thereby holding that the wife has been included by the husband to be maintained and she has no source of income, therefore, entitled to get maintenance. The maintenance at the rate of Rs.3000/- per month was granted from the date of the application. Interestingly, the husband had not filed revision under Section 397 of the Code of Criminal Procedure to challenge the said order passed by learned Judicial Magistrate First Class, but the wife filed such revision before the learned Sessions Judge, Jalna bearing Criminal Revision Application No.60 of 2015. After hearing both sides, the criminal revision application came to be allowed and the revisional Court modified and enhanced the amount of maintenance. The maintenance was granted then at the rate of Rs.5,000/- per month instead of Rs.3,000/- per month from the date of the revision application. Now, this order is challenged by the husband in this writ petition.

3. The learned Advocate appearing for the petitioner is pointing out that apart from that order there was already an order passed by the learned Judicial Magistrate First Class, Bhokardan in Miscellaneous Application No.195 of 2010 dated 07.03.2015, thereby granting

separate maintenance at the rate of Rs.3,000/- per month in her application under Section 12 of the Domestic Violence Act. Apart from that, compensation was directed to be paid of Rs.10,000/- within two months from the date of the order. Thus, the wife was getting Rs.6,000/- per month i.e. Rs.3,000/- under Section 125 of the Code of Criminal Procedure plus Rs.3,000/- per month under Domestic Violence Act. In spite of that, the revisional Court has increased the maintenance by further Rs.2,000/- per month, which was unreasonable and it deserves to be set aside.

4. Per contra, the learned Advocate appearing for the respondent submitted that the petitioner is a teacher and when the matter was before the Revisional Court, it was pointed out that he was getting Rs.40,000/- per month as salary. Though it was contended by the husband that he requires about Rs.25,000/- to Rs.30,000/- towards monthly expenditure which is exclusive of the expenses of his parents, yet it was only the oral thing. In fact, the petitioner is graduate teacher and would be definitely fetching more than Rs.70,000/- per month. Therefore, whatever enhancement has been made is perfectly legal.

5. At the outset, it is to be noted that what is not in dispute is that the petitioner is serving as a teacher. Definitely, he is getting more

amount than he has claimed and it has definitely gone up than the salary certificate, which he had produced before learned Judicial Magistrate First Class. In his cross-examination, he has admitted that he is getting salary of more than Rs.40,000/- per month as per 6th Pay Commission. It appears that the salary certificate was intentionally not submitted in Domestic Violence proceedings, but it appears that the wife had produced salary certificate of April 2012 at Exhibit-12 showing that he was then getting salary of Rs.31,901/-. Application under Section 125 of the Code of Criminal Procedure has been ultimately decided in 2015 i.e. after three years after the said salary certificate Exhibit-12. It ought to have been necessary for the learned Judicial Magistrate First Class to get a fresh salary certificate when the husband was a salaried person. Such document ought to have been called just before the pronouncement of the judgment. Even the revisional Court could have called upon the husband to produce his latest salary certificate. When he knows how much is his salary, he should tell it in positive way before the Court. It appears that the salary of the husband, his status in society and his duty to give appropriate status and financial condition to the wife was considered by both the Courts below. Whatever error was committed by the learned Judicial Magistrate First Class has been mitigated by the revisional Court. The escalation in the prices of

essential commodities was also the proper criteria to be considered in such revision petition. Even if we consider maintenance that has been granted under Domestic Violence Act, the amount which the wife would be getting from the husband would come to Rs.8,000/- (Rs.3000/- under Domestic Violence Act and Rs.5000/- under Section 125 of the Code of Criminal Procedure). This amount is honourable for the wife of a teacher to survive in present situation. No interference is required in the writ jurisdiction of this Court. The writ petition stands dismissed.

[SMT. VIBHA KANKANWADI, J.]

scm