

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.13 OF 2021

1. Shri. Satpal Anna Patil
2. Vilasmati Anna Patil ...Applicant

Versus

1. State Of Maharashtra
2. Sou. Sarika Satpal Patil ...Respondents

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Mr. Advik Kadam i/by Mr. Rahul Kadam, Advocate for the Applicant.

Mr. A.R. Patil, APP for the Respondent No.1 – State.

Mr. Manoj A. Patil, Advocate for Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.
DATE : 27th JULY, 2022.

PER COURT:

1. The Applicants are aggrieved by order dated 30.01.2020 passed by the learned Additional Sessions Judge, Ichalkaranji in Criminal Appeal No.29 of 2018 partly allowing the appeal preferred by Respondent No.2 modifying order dated 04.08.2018 passed by Judicial Magistrate First Class, Court No.3, Ichalkaranji in P.W.D.V.A. No.53 of 2016.

2. The Respondent No.2 is wife of Applicant No.1. Their marriage was performed on 02.02.1998. The Respondent No.2 filed complaint under the provisions of Protection of Women from

Domestic Violence Act, 2005 (for short “DV Act”) before the Court of learned J.M.F.C. Ichalkaranji, under Sections 12, 18, 19, 20 & 22 of the said Act.

3. Vide order dated 04.08.2018, the learned J.M.F.C. partly allowed the application preferred by Respondent No.2 and restrained the Applicants herein from committing Domestic Violence. The Applicant No.1 was directed to pay maintenance of Rs.4,000/- per month to Respondent No.2. The applicant No.1 was also directed to provide accommodation to Respondent No.2 and amount of Rs.5,000/- towards the cost of application.

4. The Respondent No.2 preferred an appeal challenging the aforesaid order before the Court of Sessions bearing regular Criminal Appeal No.29 of 2018. The learned Sessions Judge partly allowed the appeal vide order dated 30.01.2020 and modified the judgment and order dated 04.08.2018 passed by the Court of learned J.M.F.C., Ichalkaranji. The applicants were directed not to do any act of domestic violence against Respondent No.2 and her daughters. The applicant No.1 was directed to pay amount of Rs.30,000/- per month to Respondent No.2 towards her maintenance. The Applicant No.1 was also directed to deliver vacant possession of the flat situated at ‘Rama Heights’ Tower at

Nagala Park, Kolhapur to Respondent No.2 for her residence within a month and till the delivery of such possession, the Applicant No.1 was directed to pay Rs.7,000/- per month to Respondent No.2 towards rent of suitable alternative accommodation from the date of application i.e. 15.07.2016 till delivery of actual possession of the flat. The Applicant No.1 was also directed to pay Rs.3,000/- per month from the date of the order towards medical expenditure of Respondent No.2. He was also directed to handover the Stridhan of Respondent No.2 within a month on furnishing a list of such stridhan by Respondent No.2. The applicants were directed not to restrain the daughters from meeting Respondent No.2.

5. Learned Advocate for the Applicants submitted that, the Applicant No.1 had no objection for complying the directions stipulated in clause (C) and (F) of operative part of Order dated 30.01.2020 passed by the Sessions Court, Ichalkaranji in Criminal Appeal No.29 of 2018. However, the applicants are aggrieved by the directions in clause (B), (D) and (E) of the said order. It is submitted that, the learned Sessions Judge had enhanced the maintenance amount of Rs.4,000/- to Rs.30,000/- without any evidence in support of the claim of Respondent No.2. The applicants have filed additional affidavit stating that the income tax

return filed along with affidavit from the year 2016 reflects his total income from various sources. He has also enclosed the list of immovable properties. The order passed by Sessions Court is contrary to evidence on record. The learned Sessions Judge has not taken into consideration the reasons assigned by the learned Magistrate while directing the payment of maintenance and other reliefs. The order of sessions Court does not refer to any parameters of enhancing maintenance of Rs.30,000/- per month. The Court failed to take into consideration the actual income of Applicant No.1. The learned Sessions Judge has mechanically accepted the evidence produced by Respondent No.2. The learned Sessions Judge has considered extraneous material while awarding the quantum of maintenance. The marriage was dissolved by Memorandum of Understanding dated 06.02.2014. The applicant No.1 had deposited the amount as per directions of this Court which has been allowed to be withdrawn by Respondent No.2. The marriage between the Applicant No.1 and Respondent No.2 was performed on 02.02.1998. The order passed by the learned Sessions Judge is not supported by any evidence on record.

6. Learned Advocate for Respondent No.2 submitted that, there is no infirmity in the order passed by the Sessions Court. The

amount of maintenance awarded by the Sessions Court is reasonable. The Sessions Court has assigned reasons for enhancing the maintenance and granting relief in the appeal.

7. The record indicates that, Respondent No.2 first led evidence by affidavit Exhibit – 7 and after amendment of application, placed on record additional affidavit of evidence vide Exhibit – 12. The Respondent No.2 has placed on record documents relating to the agricultural property of Applicant No.1 at Exhibit 15 to 25. The learned Sessions Judge has taken note of the said documents and it was observed that, the applicant No.1 is having 6-7 acres of irrigated land and is taking crops of Sugarcane, Groundnut, and Soybean from that land. The Respondent No.2 had produced on record the certificate from Grampanchayat Bagani at Exhibit – 31 which reflects that, the Applicant No.1 has Jewellery Shop at Bagani. He is also having one motorcycle, one Honda car and one Maruti Suzuki car. The Applicant No.1 earned more than Rs.2 Lakhs per month and living lavish life. The Respondent No.2 being wife of Applicant No.1 is entitled to live the life of the status of Applicant No.1. Considering these aspects, the learned Sessions Judge has ordered Applicant No.1 to pay Rs.30,000/- per months towards maintenance and also granted other reliefs. The

Respondent No.2 had also referred to her stridhan which evidence was not controverted by the Applicant No.1 in the cross examination. The Respondent No.2 stated in her evidence that, she had purchased a flat in Nagala Park, 'Rama Heights' Kolhapur but the Applicant No.1 executed the gift deed of that flat in his favour. The property card at Exhibit – 26 shows that, the flat is in the name of Applicant No.1. He is also having other bungalow at Kolhapur, three storied building at Bagani and bungalow at Hupari.

8. The learned Sessions Judge in the impugned order dated 30.01.2020 had observed that, evidence shows that, the Respondent No.2 has been driven out from the matrimonial home and Applicant No.1 has performed second marriage by getting executed divorce deed from Respondent No.2. The Respondent No.2 is being made to live at her parents house by getting executed the gift deed of the flat and deprived her of all amenities at the matrimonial home. There is further possibility that the applicants would subject the Respondent No.2 to Domestic Violence. Despite having ample evidence on record, the trial Court had granted the relief of maintenance of meager Rs.4,000/- per month. Taking into consideration the testimony of Respondent No.2 and documentary evidence placed on record by her, she is entitled for the reliefs. The

learned Sessions Judge has passed well reasoned order. The appellate Court has appreciated the evidence on record. The amount of maintenance awarded by the trial Court was unreasonable. I do not find any reason to interfere in the impugned order. Hence, I pass the following order :

ORDER

- (i) Revision Application No.13 of 2021 stands dismissed.

(PRAKASH D. NAIK, J.)