

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

CRIMINAL WRIT PETITION NO. 59 OF 2022

Sachin Subhash Bhosale ...Petitioner
Versus
Prajakta Sachin Bhosale And Ors. ...Respondents

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Mr. Shriram S. Chaudhari, Advocate for the Petitioner.

Ms. Ankita Pawar a/w Harshavardhan G. Khambete, Advocate for respondent No.1.

Mr. S. R. Agarkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 16th SEPTEMBER, 2022

PC :

1. The petitioner has challenged the order dated 04.08.2021 passed by the Sessions Court, Pune in Criminal Appeal No.51 of 2021 allowing the appeal preferred by respondent and setting aside the order dated 04.03.2021 passed by learned J.M.F.C. Pune.

2. The respondent No.1 is the wife of petitioner. On 11.04.2017, she filed Criminal Misc. Application No.1717/2017 in the Court of learned J.M.F.C. Pune under Sections 12, 18, 19, 20, 22, 23 & 24 of the Protection of Women from Domestic Violence Act (herein after referred to as 'DV Act'). The respondent No.1 preferred an application below Exhibit – 5 under Section 23 of the

said Act for interim maintenance. On 18.04.2017, the learned Magistrate issued notice in application below Exhibits – 1 & 5. The petitioner appeared before the Court and filed say/written statement in the main application and interim application. By order dated 21.08.2017, the learned Magistrate partly allowed the interim application below Exhibit – 5 and granted interim maintenance of Rs.8,000/-. The learned Magistrate also granted Rs.7,000/- towards the rent from the date of order till final disposal of the main application. Being aggrieved by the said order, the petitioner filed Appeal No.446 of 2017 along with application below Exhibit – 5 before the Court of Sessions. During the pendency of appeal, both the parties filed Pursis below Exhibit – 10. In the said Pursis it was stated by respondent No.1 that the proceedings before the lower Court may be expedited. She would not claim interim maintenance for five months till final disposal of the main application and that the petitioner should give entire interim maintenance on monthly basis from that day. Pursis were filed before the Court. The Court passed an order on 25.10.2017. Misc. Appeal was disposed of with certain directions. On 30.10.2017, the respondent filed affidavit of evidence below Exhibit – 51 in Criminal Misc. Application No.1717 of 2017. The respondent No.1 was cross examined by the Advocate for the

petitioner. The cross examination was completed on 03.04.2021. On 27.02.2018, the petitioner filed amendment application in the say/written statement filed below Exhibit – 22 in the main application and interim application filed by respondent. The respondent filed complaints against the petitioner.

3. On 14.09.2020, the petitioner filed application below Exhibit – 328-B under Section 25(2) of the DV Act for change in the interim order passed below Exhibit – 5 in view of change in circumstances. On 11.01.2021 say was filed by respondent No.1 to the application filed below Exhibit 343. According to the petitioner the application under Section 25(2) of the DV Act was preferred in view of change in circumstances.

4. It is contented that, during the pendency of application before the learned Magistrate, the respondent filed various complaints against the petitioner and the management of the institution, where he was working as a teacher. The respondent tried to drag in the management of dispute which was in individual nature and hence, the petitioner was constrained to resign from the said job. The petitioner then joined another job namely Derma Touch Clinic, where he was working as a patient attendant with salary of Rs.7,000/- per month. Doctor of the clinic was examined and cross examined.

5. The learned Magistrate by order dated 04.03.2021 allowed the application filed by the petitioner and reduced the amount of interim maintenance and thus directed the petitioner to pay interim maintenance of Rs.3,000 and house rent of Rs.1,000/- per month and also directed him to pay arrears of Rs.1,21,130/- within two months.

6. The respondent No.1 was aggrieved by order dated 19.03.2021. She challenged the said order by preferring Criminal Appeal No.51 of 2021. The learned Sessions Judge by order dated 04.08.2021, set aside the order dated 04.03.2021 and restored the previous order of maintenance and rent.

7. The learned Advocate for the petitioner submitted that, in view of change in circumstances, the learned Magistrate modified the previous order and reduced the amount of interim maintenance towards the rent for accommodation. The respondent No.1 had repeatedly filed complaint against the petitioner as well as the management of the school, where the petitioner was working. There is no infirmity in the order passed by the Court of learned Magistrate. The salary receipt which indicate that the salary of the petitioner was Rs.7,000/- per month has been considered by the learned Magistrate for reducing the maintenance amount. The Medical Officer of the Clinic, where the petitioner working was

examined by the petitioner. He was cross examined by the respondent. There was no reasons for the Sessions Court to interfere in the order passed by the learned Magistrate under Section 25(2) of the DV Act.

8. Learned Advocate for respondent vehemently opposed the relief sought in this petition. It is submitted that, to avoid payment of interim maintenance, the petitioner had resigned from his job and purportedly joined as person assisting the patients in the clinic. The petitioner was working as head Master in the school. He has resigned from the school on his own and with a view to avoid interim maintenance, he is blaming the respondent for lodging the complaints against him and the management of the school. The petitioner has flouted the order of interim maintenance. There are arrears of maintenance. The petitioner is required to pay the school fees of the child. The school is insisting that the fees may be paid immediately. The respondent had borrowed time from the school to deposit the fees. The grounds urged by the petitioner are devoid of merits.

9. I have perused the impugned order passed by the Sessions Court. It is pertinent to note that the petitioner was employed with the international school Primann International School from 03.12.2012. When he joined the school, he was earning

Rs.13,000/- per month as salary which was subsequently increased to Rs.16,000/- in the year - 2015. He was not removed from the school by the management of school. He himself stopped attending the school without giving intimation about it to the management of the school. Although the authorities in the school tried to contact the petitioner, they could not establish contact. The respondent has filed Affidavit-in-reply and urged several contention to oppose the relief prayed by the petitioner.

10. From the reply filed by respondent No.1 it appears that, she had filed a complaint with Wakad Police Station on 24.01.2021 and Commissioner of Police on 02.06.2021 pertaining to the misbehaviour of the petitioner. She filed other complaints with the Police Station on account of harassment caused by the petitioner to her. The petitioner generates income from agricultural produces and ancestral and self acquired property. He is misleading the Court by filing documents does not indicate his real income. The complaints were filed by the respondent on bonafide grounds and to exercise the legal remedy available under the law. The petitioner has caused undue harassment to her. He is shirking his responsibility to maintain his minor daughter. The petitioner deliberately took up low paying job. He was earning at least Rs.30,000/- per month in his previous job. He has deliberately not

annexed the supporting documents, on account of statement confirming his income from his employment.

11. It is pertinent to note that the learned Magistrate as per order dated 21.08.2017 directed to pay interim maintenance to respondent No.1 in the sum of Rs.8,000/- per month and Rs.7,000/- towards rent for accommodation. The said order apparently was not complied fully and the respondent No.1 preferred an application under Section 25(2) of the DV Act. Surprisingly, the learned Magistrate has reduced the maintenance amount from 8,000/- to Rs.3,000/- and rent from 7,000/- to 1,000/-. The learned Sessions Judge vide impugned judgment and order dated 04.08.2021 has rightly set aside the order of the learned Magistrate reducing the maintenance and setting aside the order of the learned Magistrate. Hence, I pass the following order :-

ORDER

- (i) Writ Petition No. 59 of 2022 is rejected and disposed off.
- (ii) Vide order dated 28.02.2022 passed by this Court, amount of Rs.15,000/- deposit by the petitioner is allowed to be withdrawn by respondent/wife.

(iii) In the event, there are arrears towards payment of maintenance, the trial Court shall initiate appropriate steps to recover interim maintenance.

(iv) Proceedings under Section 12 of the Protection of Women from Domestic Violence Act pending before the Learned Judicial Magistrate First Class, 6th Court, Pune may be decided expeditiously and if possible within six months.

(PRAKASH D. NAIK, J.)