

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

CRIMINAL WRIT PETITION NO. 1086 OF 2022

Gurdipsingh Dharamsingh Chass ... Petitioner

Versus

Surinderkaur Gurdipsingh Chass and Another ... Respondents

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Mr. Sujay Gawade i/by Shree & Co. Advocate for Petitioner.

Ms. Shikhani Shah i/by Mr. S.R. Gaud, Advocate for Respondent No.1

Mr. A.R. Patil, APP, for the Respondent No.2-State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 5th AUGUST, 2022.

PER COURT:

1. The Petitioner is aggrieved by Order dated 17.01.2022 passed by learned Additional Sessions Judge, Greater Mumbai in Criminal Appeal No.788 of 2019.

2. The Respondent No.1 is the wife of Petitioner. Both are senior citizens. On 17.07.2018, the Respondent No.1 filed proceedings vide C.C. No.209/DV/2018 under Section 12 of Protection of Women from Domestic Violence Act (for short "DV Act") before the Court of learned Metropolitan Magistrate, 52nd Court at Kurla, Mumbai against the Petitioner seeking several reliefs. The respondent No.1 also filed an interim application in the

aforesaid proceedings under Section 23 of the said Act.

3. The learned Metropolitan Magistrate vide order dated 20.07.2018 granted ex-parte relief directing the Petitioner and others not to commit any domestic violence against Respondent No.1 and not to take any coercive step such as driving out the Respondent No.1 by themselves or through any other person and allow the Respondent No.1 to reside in shared household without any impediment.

4. The Petitioner filed an application before the Court of learned Magistrate in the aforesaid proceedings against Respondent No.1 seeking action under Section 340 of Code of Criminal Procedure contending that, the Petitioner had sold the premises vide Sale Deed dated 10.04.2018 and out of love and affection, transferred the amount of Rs.99,00,000/- to the account of Respondent No.1 vide RTGS and therefore the Respondent No.1 is in better financial position to maintain herself. The property sold by the Petitioner was self earned property of Petitioner. Out of love and affection, the Petitioner had inserted the name of Respondent No.1 as a joint owner and provided Rs.99,00,000/- to Respondent No.1 out of Sale proceeds of the said property situated at Village Balewadi, Survey No.33, Hissa No.2 admeasuring 2 Hectors, 73 Acres.

5. The learned Metropolitan Magistrate after hearing both the sides, passed the Order dated 17.09.2019 directing Respondent No.1 to 4 in the said proceedings are restrained from doing any act of domestic violence against the applicant therein. The Respondents were also restrained from dispossessing the applicant in the said proceedings from shared household without following due process of law and disposing of shared household till final disposal of the case. The prayer for maintenance was rejected.

6. Being aggrieved by the aforesaid order rejecting the prayer for interim maintenance, the Respondent No.1 preferred Criminal Appeal No.788 of 2019 before the Court of Sessions for Greater Mumbai. Learned Additional Sessions Judge by order dated 17.01.2022 modified the order dated 17.09.2019 passed by the learned Metropolitan Magistrate and directed the Petitioner to pay interim maintenance @ Rs.20,000/- per month from the date of application before the trial Court till disposal of main complaint.

7. Learned Advocate for Petitioner submitted that, learned Sessions Judge had passed the order directing the payment of interim maintenance without any material on record. There was no reason to grant of interim maintenance of Rs.20,000/- per month to Respondent No.1. The Sessions Court did not consider the fact that the Petitioner has no source of income. The learned

Metropolitan Magistrate had appreciated the facts and refused to grant interim maintenance. The Respondent No.1 had not produced any documents about Petitioners income before the trial Court to claim maintenance from the Petitioner. The Sessions Court had not assigned any cogent reason for modifying the order dated 17.09.2019 passed by the learned Magistrate. The order passed by the Sessions Court was without application of mind. The Respondent No.1 had falsely stated before the Court that, she has no source of income to maintain herself. The respondent No.1 has been earning Rs.5,00,000/- in a year which is apparent from her Income Tax Returns Verification Form, declaring her income from the years 2011-2017. The income of Respondent No.1 has been gradually shown having appreciation almost every year, which is apparent from the Income Tax Return Verification Forms from 2011-2012 to 2016-2017. The Respondent No.1 had made false statement before the Court. The Petitioner had sold joint premises vide Sale Deed dated 10.04.2018 and parted an amount of Rs.99,00,000/- to Respondent No.1. The Respondent No.1 had received the sale proceeds as stated above under the garb of repayment of Mrs. Javinder Kaur Chaggar, Manohar Singh Pahwa and Mr. Inderjit Sethi. However, she did not make any payment of amount to said persons.

8. Learned Advocate for Respondent No.1 submitted that, the Respondent No.1 is a lady aged around 70 years. She had no source of income. She is entitled for the maintenance amount. The main proceedings are pending before the Court. The Appellate Court had assigned reasons for granting interim maintenance. The Petitioner has sufficient income to pay interim maintenance to Respondent No.1. Reliance is placed on Income Tax Returns of Petitioner for the year 2017-2018. The Respondent No.1 has filed affidavit-in-reply opposing the reliefs prayed in this Petitioner. She has relied upon contents of reply and documents annexed to the reply.

9. The Respondent No.1 had initiated the proceedings under the DV Act against Petitioner and others. In the Application under Section 12 of the DV Act, the Respondent No.1 has stated that, she is not having any source of income so as to maintain herself in order to sustain her day to day expenses, food, clothing, medical expenses etc. The learned Magistrate initially passed the ex-parte order dated 20.07.2018 directing the Petitioner and others not to commit any domestic violence against Respondent No.1 or not to take any steps to drive her out of premises. The Petitioner then appeared before the Court of learned Metropolitan Magistrate and filed an application for action under Section 340 of Cr.P.C. The

learned Magistrate heard both the sides and vide Order dated 17.09.2019 partly allowed the application of Respondent No.1 granting certain reliefs in respect to dispossessing the Respondent No.1 from the shared household or disposing of the same and restrained the Petitioner and others from doing any act of domestic violence against Respondent No.1. However, the prayer for interim maintenance was rejected. Petitioner filed copies of Income Tax Returns of Respondent No.1 for the year 2011-2012 to 2016-2017. The learned Magistrate on the basis of said documents observed that the document indicates that, in the year 2011-2012, the Respondent No.1 had shown her income as Rs.1,97,026/-, in the year 2012-13 she had shown her income as Rs.1,74,773/-, in the year 2013-14 she had shown her income as Rs.2,48,529/-, in the year 2014-15, she showed her income as Rs.2,80,429/-, for the year 2015-16, she showed her income as Rs.3,25,311 and for year 2016-17 she showed her income was Rs.3,13,881/-. She is earning more than Rs.25,000/- per month which is sufficient for maintaining herself. Though the Respondent No.1 has the source of income, she will be entitled for maintenance from the Petitioner, if she proves that, he is earning more than her. However, she has not produced any documents to prove that the Petitioner is earning more amount than her. The trial Court further observed that the

Petitioner has also produced the receipt dated 02.04.2018 and copy of Sale Deed. After perusing all these documents, it appears that, on 02.04.2011, the Respondent No.1 received Rs.1,00,00,000/- from sale of property situated at Pune. In that receipt she undertook to give Rs.60,00,000/- to Mrs. Javinder Kaur Chaggar, Rs.10,00,000/- to Manohar Singh Pahwa and Rs.5,00,000/- to Mr. Inderjit Sethi. Even after the payment of these persons Rs.25,00,000/- had remained with Respondent No.1. This evidence falsify the claim of Respondent No.1 that she has no source of income and she is unable to maintain herself. She has sufficient source of income and she is able to maintain herself and therefore not entitled for interim maintenance from Petitioner.

10. From the aforesaid reasoning it is apparent that the trial Court had assigned reasons for not granting interim maintenance to Respondent No.1. The documents produced by Petitioner showed that the Respondent No.1 has source of income. The Appellate Court vide order dated 17.01.2022 granted interim maintenance of Rs.20,000 to Respondent No.1. The learned Sessions Judge has observed that, the Petitioner had not disclosed his income. The Petitioner could not show the type of business of Respondent No.1. Sometimes in the business, family income tax returns are filed for various reasons in the name of family

members. The Petitioner had not filed his income source fairly before the Court. Therefore the statement of Respondent No.1 is required to be considered for grant of interim maintenance. The respondent No.1 is entitled for interim maintenance. Considering the facts and circumstances of the case, it is just and proper to grant interim maintenance to Respondent No.1 at Rs.20,000/- per month from the date of application before the trial Court.

11. It is pertinent to note that, the trial Court had assigned reasons for refusing interim maintenance to Respondent No.1. The documents produced by Petitioner indicated source of income of Respondent No.1. The Appellate Court had drawn adverse inferences against Petitioner without any reason and documentary evidence on record. The respondent No.1 is trying to rely upon certain documents including Income Tax Returns of Respondent No.1 and the fact that, the amount was parted to Respondent No.1 after the sale of property. Considering the aforesaid circumstances it would be appropriate to remit the parties to the trial Court by setting aside the order passed by the sessions Court granting interim maintenance to Respondent No.1. Both the parties can be allowed to produce material in support of their contention before the trial court in relation to interim maintenance prayed by Respondent No.1 and the trial Court can consider the said material

in accordance with law.

12. Considering the aforesaid circumstances, I pass the following Order :-

ORDER

- (i) Writ Petition is allowed and disposed off;
- (ii) Impugned order dated 17th January 2022 passed by Additional Sessions Judge, Greater Bombay, in Criminal Appeal No.788 of 2019 is quashed and set aside;
- (iii) The order dated 17th September 2019 passed by Metropolitan Magistrate, 52nd Court, Kurla, Mumbai to the extend of interim maintenance is set aside;
- (iv) Respondent no.1 is permitted to pursue application for interim maintenance before the Court of learned Magistrate;
- (v) Both the parties are allowed to produce material in support of their contention before the Trial Court in relation to interim maintenance prayed by respondent no.1 and Trial Court is requested to pass order on application for interim maintenance expeditiously in accordance with law without being influenced by previous orders;
- (vi) The proceedings before Trial Court are expedited.

(PRAKASH D. NAIK, J.)