

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.188 OF 2022

Abhaykumar Tatyasaheb Katrale ...Applicant

vs.

Rupali @ Apurva Abhay Katrale and Another ...Respondents

Ms. Megha Shigavan i/b. Mr. Mohit Jadhav, for the Applicant.

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

VISHAL
SUBHASH
PAREKAR

CORAM : N. J. JAMADAR, J.

DATE : APRIL 21, 2022

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VISHAL SUBHASH
PAREKAR

Date: 2022.04.25
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P.C.:

1. Heard the learned counsel for the applicant.
2. Perused the impugned judgment and order passed by the learned Additional Sessions Judge, Kolhapur whereby the learned Sessions Judge partly allowed the appeal preferred by the respondent No. 1/wife and modified the order passed by the learned Magistrate in Misc. Cri. Application No.52 of 2012 and awarded maintenance at the rate of Rs. 3,000/- per month to the respondent No. 1.
3. The marriage of the applicant and respondent No. 1 was solemnized on 5th May, 2005. In the year 2012, they were blessed with a son, Suyog. In the wake of marital discord, the respondent No. 1 filed complaint under section 12 of the Protection of Women (from Domestic Violence) Act, 2005 alleging that the applicant and

his relations had subjected her to domestic violence. Incidents of alleged physical and mental harassment were adverted to, and various reliefs were sought, in the said complaint.

4. Eventually, by the judgment and order dated 28th July, 2015 the learned Magistrate was persuaded to partly allow the application and award maintenance at the rate of Rs. 2,000/- to Suyog, the son of the applicant and respondent No. 1, only. Rest of the prayers of respondent No. 1 were rejected.

5. Being aggrieved, the respondent No. 1 preferred an appeal being Criminal Appeal No. 167 of 2015 in the Court of learned Sessions Judge, Kolhapur. By the impugned judgment and order dated 5th March, 2021, the learned Additional Sessions Judge, Kolhapur allowed the appeal and directed payment of a sum of Rs. 5,000/- per month as a monetary relief towards the maintenance for the applicant and her son Suyog.

6. Being aggrieved the applicant/original respondent No. 1 has preferred this revision.

7. The learned counsel for the applicant submitted that since the respondent No. 1/wife has been working as a Silversmith and thus able to maintain herself, the learned Additional Sessions Judge committed error in awarding the maintenance. The learned counsel invited the attention of the Court to the admissions in the cross

examination of respondent No. 1/wife that she was working as a Silversmith and earned Rs. 100/- or 150/- per day. The learned Sessions Judge was of the view that the fact that respondent No. 1 was working to earn livelihood was not by itself sufficient to disentitle her from claiming monetary relief.

8. The aforesaid approach of the learned Additional Sessions Judge is justifiable. Under the weight of the circumstances, the respondent No. 1 must have been forced to work to sustain herself. The fact that she was working as Silversmith and earned Rs. 100/- or 150/- per day, could not have been arrayed against her by the learned Magistrate. In this inflationary era the income of about Rs. 5,000/- per month, even if construed rather generously, would not be sufficient to meet the necessities of life. It is not the law that merely because the wife earns something, to sustain herself, she is dis-entitled from claiming monetary relief from her husband who has a moral and legal obligation to maintain her.

9. The fact that the wife is engaged in a casual labour or carries on some business and earns some money is not the end of the matter. Neither mere potential to earn nor the actual earning, howsoever meager it may be, is sufficient to deny the claim of maintenance. A profitable reference can be made to the judgment of the Supreme Court in the case of **Sunita Kachwa vs. Anil Kachwa**¹

¹ III 2014 (DMC) 878 S.C.

wherein it was observed that, 'the learned counsel for the respondent submitted that the appellant-wife is well qualified, having post graduate degree in Geography and working as a teacher in Jabalpur and also working in Health Department. Therefore, she has income of her own and needs no financial support from respondent. In our considered view, merely because the appellant-wife is a qualified post graduate, it would not be sufficient to hold that she is in a position to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.

10. From this stand point, the monetary relief at the rate of Rs. 5,000/- per month can only be said to be conservative. Therefore, no interference is warranted.

11. Hence, the revision application stands dismissed.

(N. J. JAMADAR, J.)