

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

***CRIMINAL REVISION APPLICATION NO.99 OF 2022
WITH
CRIMINAL INTERIM APPLICATION NO.1110 OF 2020
(For Stay)
IN
CRIMINAL REVISION APPLICATION NO.99 OF 2022***

Santosh Shankar Waghmare ...Applicant
Versus
Swati Santosh Waghmare and Anr. ...Respondents

Mr. Shyam Prakash Khot, for the Applicant.

Mr. Rishiraj C. Gohil, for the Respondent No.1.

Mr. A. R. Patil, A.P.P for the Respondent No.2– State.

CORAM : REVATI MOHITE DERE, J.

DATE : 14th MARCH 2022

P.C. :

1. Heard learned counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Mr. Gohil, waives notice on behalf of respondent No.1. Learned APP waives notice on behalf of respondent No.2-State.

3. By this application, the applicant has impugned the order dated 2nd December 2017, passed by the learned Additional Sessions Judge, Greater Bombay in Criminal Appeal No.422 of 2017, by which, the learned Judge was pleased to allow the respondent No.1's appeal preferred against the order passed by the trial Court in the Domestic Violence proceeding ('D.V. proceeding'), rejecting the respondent No.1's prayer for interim reliefs in D.V. proceeding. The learned Additional Sessions Judge, Greater Bombay vide the said order 2nd December 2017 passed in the aforesaid Criminal Appeal directed the applicant to pay interim maintenance of Rs.10,000/- to the respondent No.1 per month, from the date of the application.

4. Perused the papers. The respondent No.1 has filed D.V. proceeding being D.V. Case No.89 of 2016, in the Court of the learned Metropolitan Magistrate, 13th Court, Dadar, Mumbai, as against the applicant. Alongwith the original application, the respondent No.1 sought interim maintenance of Rs.25,000/- and a residence order in the flat at Badlapur. The learned Magistrate rejected the said application (Exhibit – 9) seeking interim reliefs vide order dated 20th May 2017. Being aggrieved by

the said order rejecting the interim reliefs as sought for in the application (Exhibit – 9), the respondent No.1 filed an appeal being Criminal Appeal No.422 of 2017, in the Court of the learned Additional Sessions Judge, Greater Bombay. The learned Additional Sessions Judge, allowed the said appeal vide order dated 2nd December 2017, which is impugned in the present revision application. The operative part of the said order reads thus:-

“ORDER

- (1) Criminal Appeal No.422/2017 is allowed.
- (2) The order rejecting the interim relief in form of claiming maintenance is set aside.
- (3) The respondent is directed to pay monthly maintenance of Rs. 10,000/- (Rupees Ten thousand only) to the appellant from the date of application.
- (4) Criminal Appeal No.422/2017 stands disposed off accordingly.”

5. Being aggrieved by the said order dated 2nd December 2017, the applicant has filed the aforesaid Revision Application. Alongwith the aforesaid Revision Application, the applicant filed a delay condonation

application seeking condonation of delay of 481 days caused in filing the aforesaid Revision Application, which according to the learned counsel for the respondent No.1 was 841 days.

6. Be that as it may, without going into the number of days, this Court vide order dated 21st January 2022 allowed the said application and condoned the delay caused in filing the said Revision Application, subject to payment of costs of Rs.25,000/- by the applicant to the respondent No.1. It is not in dispute that the applicant has paid the said costs of Rs.25,000/- to the respondent No.1.

7. As far as the merits of the Revision Application are concerned, it is the case of the applicant that the applicant was not heard by the Appellate Court i.e. the learned Additional Sessions Judge, Greater Bombay, before the impugned order was passed.

8. Learned Counsel for the respondent No.1 states that pursuant to the order passed by the Appellate Court i.e. the learned Additional Sessions Judge, Greater Bombay, the amount payable by the applicant by

way of interim maintenance is about Rs.5,50,000/-, till date. He submits that the applicant has out of the said amount, paid a sum of Rs.3,80,000/- to the respondent No.1, till date and that the balance amount of Rs.1,70,000/- is still payable. Learned Counsel for the respondent No.1 submits that the applicant's advocate had put in his appearance before the Appellate Court, however, neither the applicant nor his advocate remained present on the date given by the Appellate Court for hearing of the aforesaid Criminal Appeal. He submits that the respondent No.1 cannot be held responsible for non-appearance of the applicant before the Appellate Court. He, however, fairly states that in the event the impugned order is being quashed and set aside and the matter remitted back to the Appellate Court, the applicant be directed to deposit the balance arrears of Rs.1,70,000/- in addition to Rs.10,000/- per month, as awarded by the Appellate Court, till such time the Criminal Appeal is finally decided by the said Court.

9. Learned Counsel for the applicant, on instructions of the applicant, states that the applicant without prejudice to his rights and contentions before the Appellate Court, is ready to deposit the balance amount of Rs.1,70,000/- before the Appellant Court, within eight weeks

from today in two equal installments i.e. Rs.85,000/- (50% of Rs.1,70,000/-) within four weeks from today and the balance Rs.85,000/- (50% of Rs.1,70,000/-) within four weeks thereafter. Learned Counsel for the applicant states that in addition to Rs.1,70,000/- i.e. the arrears of interim maintenance, the applicant will continue to pay Rs.10,000/- to the respondent No.1 every month, till the Criminal Appeal is finally decided by the trial Court. He submits that the said amount will be deposited by the applicant in favour of the respondent No.1, without prejudice to his rights and contentions before the Appellate Court.

10. Considering the aforesaid, it would be appropriate to give one opportunity to the applicant to argue his case on merits. Accordingly, the revision application is allowed on the following terms and conditions:-

ORDER

- (i) The impugned order dated 2nd December 2017, passed by the learned Additional Sessions Judge, Greater Bombay in Criminal Appeal No.422 of 2017, is quashed and set aside;
- (ii) Criminal Appeal No.422 of 2017 is restored back to its original file. The learned Judge to decide the said appeal, on its own merits, in accordance with law, after hearing both the parties, uninfluenced by

its earlier order dated 2nd December 2017;

- (iii) The applicant to transfer Rs.1,70,000/- in the respondent No.1's account, i.e. the arrears of interim maintenance of Rs.1,70,000/- as awarded by the Appellate Court, within eight weeks from today in two equal installments i.e. Rs.85,000/- (50% of Rs.1,70,000/-) within four weeks from today and the balance Rs.85,000/- (50% of Rs.1,70,000/-) within four weeks, thereafter, by NEFT / RTGS;
- (iv) The applicant shall continue to pay the respondent No.1 a sum of Rs.10,000/- per month as directed by the Appellate Court, till the Criminal Appeal is finally disposed of;
- (v) All contentions of both the parties are kept open;
- (vi) Criminal Appeal No.422 of 2017, to be decided, as expeditiously as possible, and in any event, within six months from the date of receipt of this order. All parties to co-operate in the expeditious disposal of the Criminal Appeal;
- (vii) Till the aforesaid Criminal Appeal is decided by the Appellate Court, the trial Court proceedings are stayed. Needless to state that, if payments are not made as stated aforesaid, liberty is granted to the respondent No.1 to file execution proceeding, which if filed, will be decided expeditiously by the trial Court, within one month.

11. Rule is made absolute in the aforesaid terms and the application is accordingly disposed of.

12. Needless to also state, that if the applicant fails to deposit the amounts as stated aforesaid within 8 weeks, i.e. the arrears, the order dated 2nd December 2017, passed by the Appellate Court, shall stand restored. It is also open for the respondent No.1 to file an appropriate application before the trial Court for execution of the maintenance order and to apply for Distress Warrant.

13. In view of the aforesaid, the Interim Application for stay, being Interim Application No.1110 of 2020, does not survive and the same is also disposed of.

14. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.