

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

CRIMINAL WRIT PETITION NO. 1838 OF 2022

Kiran Pravin Kate ...Petitioner
Versus
Pravin Yashwant Kate And Anr. ...Respondents

....

Mr. Sanjay Bhojwani, Advocate for the Petitioner.

Mr. Nikhil Wadikar a/w Mr. A. Salunkhe a/w Mr. Pradip Zende i/by
Nandu Pawar, Advocate for Respondent No.1.

Mr. Arfan Sait, APP for the Respondent – State.

....

CORAM : PRAKASH D. NAIK, J.
DATE : 21st JULY, 2022.

PER COURT:

1. The petitioner challenges order dated 11th October, 2021 passed by the Family Court No.5, Pune, below Exhibit – 92 in Criminal M.A. No.14 of 2020 and order dated 25th February, 2022 passed by Family Court No.5, Pune below Exhibit – 99 in Criminal M.A. No.14 of 2020.

2. The factual matrix as reflected in this petition is as follows :-

- i. The petitioner and respondent No.1 were married on 26th April, 1992. On 14th September, 2018, the petitioner filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against respondent No.1

before the Court of J.M.F.C. Cantonment Court, Pune. The application was registered as Criminal Miscellaneous Application No.896 of 2018. The respondent filed his say to the said application on 29th April, 2019. The respondent filed application under Section 91 of Cr.P.C. below Exhibit – 29 and 30 on 29th March, 2019 before the Court of Joint J.M.F.C., Cantonment Court, Pune. The learned J.M.F.C. passed an interim order below Exhibit – 29 and Exhibit – 30 on 29th March, 2019. The application below Exhibit – 29 was rejected and the application Exhibit – 30 was partly allowed. The respondent filed criminal writ petition challenging interim order below Exhibit – 29 and Exhibit – 30 before this Court. The petition was dismissed as withdrawn with liberty to file application under Section 91 of Cr.P.C. vide order dated 13th November, 2019. The respondent filed application below Exhibit – 57 under Section 91 of Cr.P.C. on 21st November, 2019. The petitioner filed reply to the said application.

ii. The respondent filed Miscellaneous Civil Application No.36 of 2020 seeking transfer of the proceedings under the Domestic Violence Act from the Court of J.M.F.C. Cantonment Court – 2, Family Court, Pune. The application was allowed

by order dated 9th March, 2020 and the proceedings under the Domestic Violence Act were transferred to the Family Court, Pune. The Court had directed expeditious disposal of the proceedings within a period of eight months. After the transfer of proceedings, the case was numbered as Criminal Miscellaneous Application No.14 of 2020.

iii. The petitioner filed affidavit of assets and liabilities in light of the decision of the Hon'ble Supreme Court in the case of Rajnesh V/s. Neha and Another, delivered in Criminal Appeal No.730 of 2020 arising out of Special Leave Petition (Criminal) No.9503 of 2018. The affidavit was filed on 16th December, 2020. The petitioner filed pursis stating that the petitioner is filing additional affidavit. The additional affidavit was filed replying point wise the application Exhibit – 57 and annexed additional documents.

iv. The Family Court, Pune rejected the application under Section 91 of Cr.PC. below Exhibit – 57 on 8th April, 2021. The said order was challenged by the respondent by preferring Writ Petition No.2304 of 2021 before this Court challenging order passed below Exhibit – 57 and interalia directions were sought with the petitioner to comply with terms of the

decision of the Hon'ble Supreme Court in the case of Rajnesh V/s. Neha and Anr. (supra). Vide order dated 17th August, 2021, this Court rejected the Writ Petition thereby upholding the order passed below Exhibit – 57. The Court directed expeditious disposal of the application for interim maintenance. The respondent filed Special Leave Petition before the Supreme Court viz. SLP (Cri.) No. 6524 of 2021 challenging order dated 17th August, 2021 passed by this Court in Criminal Writ Petition No.2304 of 2021. The Hon'ble Supreme Court dismissed Special Leave Petition by order dated 6th September, 2021.

v. The respondent No.1 filed application below Exhibit – 92 before the Family Court, Pune on 20th September, 2021 directing the petitioner to comply with the directions in the judgment of Rajnesh V/s. Neha and Anr. (supra) passed by the Hon'ble Supreme Court. The petitioner filed say to the said application below Exhibit-92. The family Court by order dated 11th October, 2021 allowed the said application below Exhibit – 92 and directed the petitioner to file concise application seeking interim maintenance amount from respondent.

vi. The petitioner filed an application on 20th October,

2021 for directing the respondent No.1 to serve the copy of Special Leave Petition No.6524 of 2021 along with all annexures. The application was filed on 20th October, 2021. The respondent No.1 filed his say on 20th October, 2021 refusing to handover copy of Special Leave Petition stating that the respondent No.1 was not in touch with the advocate, who appeared before the Supreme Court amongst other excuses. The petitioner obtained copy of the memo of Special Leave Petition bearing No.6524 of 2021.

vii. The petitioner then filed application on 24th November, 2021 below Exhibit – 99 recalling order dated 11th October, 2021 below Exhibit – 92 alleging fraud perpetrated by respondent as all contentions raised in the application Exhibit – 92 were raised by the respondent in SLP before the Supreme Court. On 2nd December, 2021, the respondent No.1 filed reply to the said application on Exhibit – 99. The Family Court heard the application on 14th December, 2021 and posted it for order on 4th January, 2022. The application was then adjourned to 20th January, 2022 and then to 2nd February, 2022 and 15th February, 2022. Thereafter, the application was adjourned to 25th February, 2022. The Family Court by order

dated 25th February, 2022 rejected the application below Exhibit – 99 filed by the petitioner for recalling order dated 11th October, 2021.

3. Learned Advocate for the petitioner submitted that the impugned orders dated 11th October, 2021 and 25th February, 2022 are erroneous and deserves to be set aside. The respondent No.1 has been delaying the proceedings. Considering the factual aspects of this case, there was no reason to direct the petitioner to prefer concise application for interim maintenance. The order for interim maintenance is pending before the Family Court. This Court had come to the conclusion that there was no perversity in the order and did not agree with the submission of respondent that there was no compliance of directions laid down in the case of Rajnesh V/s. Neha and Anr. (supra). The learned Judge ought not have entertained the application below Exhibit – 92. Even after the order passed by the Hon'ble Supreme Court in Special Leave Petition preferred by respondent No.1, the learned Judge did not recall the order dated 11th October, 2021. The purpose of preferring an application for interim maintenance is frustrated by the respondent No.1. The learned Judge fell in error while observing that the petitioner had claimed certain relief in the

interim before the learned Magistrate and not the relief of interim maintenance. The petitioner had claimed the relief on ad-interim basis. No separate application is required to be made for interim relief under the Domestic Violence Act. The ground urged in application Exhibit – 92 were identical to the grounds in SLP filed by respondent which were dismissed. The respondent No.1 did not produce the copy of Special Leave Petition before the Family Court. This Court vide order dated 17th August, 2021 has observed that the application for interim maintenance is pending since September – 2018 and the Court was directed to decide it expeditiously.

4. Learned Advocate for the petitioner has relied upon the decision of this Court in the case of Vishal Damodar Patil V/s. Vishakha Vishal Patil 2009 Cri. L.J. 107 and also placed on record the copy of affidavit under Section 23(2) of the Protection of Women from Domestic Violence Act, 2005.

5. The respondent No.1 has filed affidavit in reply dated 12th July, 2022 opposing the relief sought in this petition. Learned Advocate for respondent No.1 submitted that there is no infirmity in the order passed by the Family Court. The direction to prefer concise application for interim maintenance was issued to the petitioner. In the light of directions in the decision of the Hon'ble

Supreme Court in the case of Rajnesh V/s. Neha and Anr. (supra), the review was not maintainable and hence the family Court has rightly rejected the application preferred by the petitioner for recalling of the order dated 11th October, 2021. The respondent No.1 had taken specific stand before this Court in Criminal Writ Petition No.2304 of 2021 and the Hon'ble Supreme Court in SLP No.6524 of 2021 that there was no compliance by the petitioner in terms of the decision in the case of Rajnesh V/s. Neha and Anr. (supra), however, it was in respect to the disclosure of assets and liabilities. The grounds to separate the application praying for interim maintenance not being filed by the petitioner before the trial Court was taken for the first time by respondent before the Family Court in Exhibit – 92. The learned counsel for respondent referred to prayer clauses in the application under Section 12 of the Domestic Violence Act and submitted that there was no prayer for interim maintenance. In the case of Rajnesh V/s. Neha and Anr. (supra), the Supreme Court in clause (iv) of the directions relating the payment of interim maintenance as directed that concise application for interim maintenance with limited pleadings along with the affidavit of disclosure of assets and liabilities is required to file before the concerned Court as a mandatory requirement. The family Court in order dated 11th October, 2021 has observed that,

no interim relief is claimed by the petitioner in respect to clause (xii) seeking maintenance amount of Rs.1,50,000/- per month, therefore, it is necessary to file separate application seeking said relief. The decision of the Supreme Court in the case Rajnesh V/s. Neha and Anr. (supra) clarifies on the point of requirement of filing an interim application for maintenance. This would not only apply to the matters filed after the said ruling, but would also to apply to the matters which are pending as the respondent has not delayed the proceedings in any manner. The petitioner has filed three disclosures affidavits. The delay in proceedings has been caused due to non-production of documents by petitioner. The Family Court has directed the petitioner to file concise application seeking interim maintenance. Instead of filing application, the petitioner filed application at Exhibit – 99 to recall the order dated 18th October, 2021. On 16th December, 2020 affidavit of disclosure of assets and liabilities was filed by the petitioner. It was not as per the guidelines of the Supreme Court in the decision referred above. On 24th December, 2020 additional affidavit was filed by the petitioner and on 2nd January, 2021, affidavit of disclosure of assets and liabilities has filed by respondent. Although the application was filed by respondent under Section 91 of Cr.PC., the petitioner insisting for hearing of interim application. On 1st March, 2021, the

petitioner filed additional affidavit of disclosure of Assets and Liabilities and filed account statements of eight bank accounts. The respondent filed written submissions pointing out discrepancies in the additional affidavit filed by the petitioner at Exhibit -75, the decision relied upon by the petitioner is not applicable in the present case. The SLP before Hon'ble Supreme Court seeking direction to comply with Rajnesh V/s. Neha and Anr. (supra) regarding affidavit of assets and liabilities and not regarding separate interim application.

6. The submissions of both the sides and the scrutiny of documents on record indicate that the petitioner had filed an application under Section 12 of the Domestic Violence Act on 14th September, 2018. In the said application, the petitioner has sought several reliefs. One of the relief prayed by the petitioner is to direct respondent to pay to the petitioner the amount of Rs.1,50,000/- per month to the petitioner as maintenance. The respondent is harping on the fact that, in prayer clause (xx) the petitioner had not prayed for ad-interim relief for maintenance. However, the record would indicate that, Affidavit of Assets And Liabilities For Non-Agrarian Deponents on 16th December, 2020 was filed. The petitioner has provided personal information, general monthly

expenses, details of legal proceedings, details of deponents, family members, details of children expenditure, etc. The petitioner filed pursis on 1st March, 2021 responding to the application below Exhibit – 57 filed by respondent No.1 seeking documents under Section 91 of Cr.P.C. from petitioner. Additional affidavit of petitioner was filed. In the said affidavit it was stated that the learned Magistrate had passed an order dated 29th March, 2019 issuing process summons to the Income Tax to produce Income Tax Returns of the petitioner for the years 2015-16, 2016-17 & 2017-18. The respondent failed to pay the process fee for the witness summons and delayed the proceedings. She voluntarily filed her Income Tax Returns as the respondent did not get the witness summons issued. The petitioner filed through their affidavit the documents required in line with the order of the High Court dated 13th November, 2019 without prejudice to her contentions. The additional affidavit contains the details in tables/columns. The petitioner has also placed on record the statement of accounts. The respondent No.1 filed Criminal Writ Petition No.2304 of 2021. In the said petition it was averred that the petitioner herein filed affidavit dated 16th December, 2021 partially disclosing her assets and liabilities. In the meantime, she pressed her prayer for interim maintenance before the family Court. However, since the

application Exhibit – 57 was pending before the family Court, the petitioner requested the Court to decide the application Exhibit – 57 prior to the adjudication of interim maintenance, so as to have full disclosure of the relevant facts prior to the adjudication. Thus, the respondent No.1 contended in the petition that the petitioner's wife was insisting for interim maintenance. It was also contended that the wife has not made full disclosure in the additional affidavit dated 20th March, 2021. Criminal Writ Petition No.2304 of 2021 was disposed of by order dated 17th August, 2021. This Court had observed that the contention of the petitioner herein (respondent No.1 in this petition) is that the latest income tax returns are not filed. Bank account details are not to be found in the income tax return and that the disclosure made is not in terms of the Hon'ble Supreme Court in the case of Rajnesh V/s. Neha and Anr. (supra). The Court further observed that the parties have filed their affidavit Exhibits at 66, 68 and 75. The Court possess the evidence filed by the wife (petitioner) and observed that the details of the documents and investments made in mutual funds and share trading are listed. Even income tax returns were filed up to the year – 2019, whereas the application for maintenance was filed on 14th September, 2018. All these aspects are considered by the Family Court. The respondent – wife filed information in details by way of

affidavits as regards bank accounts, details of investment made in mutual fund and share trading companies. If the Family Court was of the opinion that the case is not made out for issuing witness summons to the banks, mutual funds and share trading companies, there is no perversity in the order passed by the Family Court. The Court then observed that the application for maintenance is pending since September – 2018 and the Family Court was requested to decide the application expeditiously. The dispute was raised by the respondent with regards to the non-compliance of directions of the Hon'ble Supreme Court in the case of Rajnesh V/s. Neha and Anr. (supra) by not providing requisite details. The petitioner had filed affidavit and additional affidavits with documents of these questions were raised in respect to the maintenance claimed by the petitioner. The respondent was aware that the affidavits were filed in support of the prayer for interim maintenance. The respondent No.1 filed an application Exhibit – 92 on 20th September, 2021 and in the said application it is contended that, while considering the issue of interim maintenance, the Hon'ble Supreme Court in the case of Rajnesh V/s. Neha and Anr. (supra) observed that, often parties submit scanty material or do not disclose correct details and suppress vital information as regards their income. Hence the Supreme Court

laid down guidelines pertaining to payment of maintenance in matrimonial matters and directed parties to file affidavit of assets and liabilities. The applicant filed affidavit of assets and liabilities. The affidavit filed by the wife is not in consonance with the guidelines laid down by the Supreme Court and in the said application it was prayed that the applicant-wife be directed to comply the directions of the Supreme Court in the decision of the Hon'ble Supreme Court in the case Rajnesh V/s. Neha and Anr. (supra). The said application was preferred pursuant to dismissal of Writ Petition No.2304 of 2021 by this Court, wherein, similar issue has considered. The said application was opposed by filing say. In the said application it was also urged that the wife has not filed separate application for interim maintenance as contemplated in the decision of the Hon'ble Supreme Court and the prayer for interim maintenance cannot be considered. Thus, although the issue relating to interim maintenance qua disclosure of Assets and Liabilities was being adjudicated, the respondent No.1 came out with the aforesaid application and prayed that the petitioner's wife be directed to comply the directions of the Supreme Court. The Family Court vide order dated 11th October, 2021 directed the petitioner to file concise application seeking interim maintenance amount on the next date i.e. on 18th October, 2021. It is pertinent

to note that the Family Court while passing the said order referred to the observations of this Court in the case of Abhijit Auti V/s. The State of Maharashtra, wherein it was observed that there was some debate as regards the spheres in which sub-section 1 and sub-section 2 of Section 23 operate. When the aggrieved persons desires to claim any interim relief under Section 23 of the Act, it is not necessary for the aggrieved person to take out a separate application for interim relief and only the requirement of law that the affidavit in prescribed form – III of the said rules has to be filed by the aggrieved person. The Court however relied upon the decision of the Hon'ble Supreme Court in the case of Rajnesh V/s. Neha and Anr. (supra) and directed the petitioner to file the concise application for interim maintenance. The Family Court then adverted to the prayers in the application under Section 12 of the Domestic Violence Act and observed that, there was no prayer for ad-interim relief for maintenance. Thus, the application preferred by the respondent was allowed. There is no debate that the Hon'ble Supreme Court in the case of Rajnesh V/s. Neha and Anr. (supra) has issued several guidelines. However, in the facts of this case, after adjudicating the issues about the affidavits of disclosure which was on record and when both the parties were aware that the issue relating to interim maintenance were adjudicated, there

was no reason to direct the petitioner to file concise application for interim maintenance. The application was allowed by order 11th October, 2021. It is pertinent to note that the respondent No.1 had challenged the order dated 17th August, 2021 passed by this Court in Criminal Writ Petition No.2304 of 2021 by preferring Special Leave Petition. The said petition was dismissed by the Supreme Court vide order dated 6th September, 2021 by observing that the Court is not inclined to interfere with the impugned order dated 17th August, 2021. Surprisingly, the respondent No.1 has not brought to the notice of the Family Court, the order dated 6th September, 2021, when the application below Exhibit – 92 was decided by the Court. The petitioner was required to prefer an application before the Family Court seeking directions to call upon the respondent No.1 to provide the copy of Special Leave Petition preferred by him challenging the order dated 17th August, 2021. Interesting reply was filed by the respondent No.1 to the said application by stating that the Special Leave Petition was dismissed in limine and without notice to the respondent therein. Needless to say that the copy of SLP is made available to the other side only when the notice is issued or on such party is on caveat. It is also a common knowledge that, certified copy of SLP can be secured from the registers of the Supreme Court by making third party

application and the applicant is free to take recourse of such course of action, which is a standard procedure. In any case the answering respondent is not in contact with the Advocate on record before the Supreme Court and therefore finds it difficult to comply with requirement stated by the applicant. Hence the applicant be directed to make application as third party for securing copy of the SLP and for the sake of convenience, the respondent giving necessary details for the same and the reply is dated 20th October, 2021. The Special Leave Petition was dismissed on 6th September, 2021. The respondent was deliberately silent in the reply about the result of the Special Leave Petition. In these circumstances, the petitioner filed an application for recalling the order dated 11th October, 2021 which is opposed by the respondent and the said application was rejected by the Family Court.

7. In light of the factual aspects of this matter, there was no reason for issuing directions to file the concise application for interim maintenance. When the issue was being adjudicated before the Family Court since long, and the documents which are requested for seeking prayers in respect to interim maintenance were already on record. The intention of respondent No.1 was very clear. The conduct of respondent No.1 makes it clear that, sole

intention was to delay the adjudication of issue of interim maintenance. The Family Court ought not to have allowed the application preferred by respondent No.1 and proceeded to pass the impugned order. In the case of Vishal Damodar Patil V/s. Vishakha Vishal Patil, 2009, Cri.L.J., 107, this Court had observed that, it is not possible to accept the contention that the interim relief under Section 23 of the Act can be granted only on a separate application for interim relief made by the aggrieved person. From the scheme of the provisions of the said Act and in particular Section 23 r/w Section 28 of the said Act and Rule 7 of the said Rules, it is apparent that there is no such requirement of law. The only requirement of law is that the aggrieved person seeking ex-parte ad-interim relief will have to file affidavit in prescribed form provided under Rule – 7 are sub-section 2 of Section 23 of the said Act. Learned counsel for the petitioner has produced the affidavit under Section 23 of the Protection of Women from Domestic Violence Act, 2005 dated 14th September, 2018. It is true that the apex Court in the case of Rajnesh V/s. Neha and Anr. (supra) had directed that party claiming maintenance is required to file concise application for interim maintenance. However, in the light of the facts of the present case, there was no reason for the Family Court to pass the impugned

order directing the petitioner to file concise application.

ORDER

- i.** Criminal Writ Petition No.1838 of 2022 is allowed and disposed off.
 - ii.** The impugned order dated 11th October, 2021 passed by learned Judge, Family Court No.5, Pune in Criminal M. A. No.14 of 2020 below Exhibit - 92 directing the petitioner to file concise application seeking interim maintenance amount from respondent – husband and order dated 25th February, 2022 passed by learned Judge, Family Court No.5 below Criminal Misc. Application No. 14 of 2020/Application Exhibit – 99 rejecting application preferred by petitioner for recalling order dated 11th October, 2021 below Exhibit – 92 are quashed and set aside.
 - iii.** The Family Court shall proceed with the matter in accordance with law.
 - iv.** The issue regarding interim maintenance shall be decided expeditiously within a period of two months from the date of receipt of this order.
- 2.** Learned counsel for Respondent No.1 seeks stay of this order. The request is rejected considering the fact that the issue relates to grant of interim maintenance.

(PRAKASH D. NAIK, J.)