

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

CRIMINAL WRIT PETITION NO.4617 OF 2021

Shahid A. Rashid Kapadi

.... Petitioner

versus

Shayan Shahid Kapdi & Anr.

.... Respondents

.....

- Mr.Rakesh Bhatkar, Advocate for Petitioner.
- Mr.Sudhir Prabhu, Advocate for Respondent No.1.
- Smt. A. A. Takalkar, APP for the State/Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 11th FEBRUARY, 2022

(through video conferencing)

P.C. :

1. The Applicant is seeking to challenge the order passed by the learned Sessions Judge, Ratnagiri, dated 04/02/2021 in Revision Application No.02/2020.

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2. Heard Mr.Rakesh Bhatkar, learned counsel for the Petitioner and Mr.Sudhir Prabhu, Advocate for Respondent No.1 and Smt. A. A. Takalkar, learned APP for the State.

3. The Respondent No.1 is the son of the Petitioner. The Respondent No.1 through his mother had filed application u/s 125 of Cr.P.C. for maintenance. It was prayed that the Petitioner herein be directed to pay Rs.25,000/- per month for maintenance of the Respondent No.1. The prayer was also made for interim maintenance for the same.
4. Learned Judicial Magistrate First Class, Ratnagiri, vide order dated 27/11/2019 partly allowed the application of Respondent No.1 herein and directed the Petitioner to pay interim maintenance of Rs.10,000/- per month to the Respondent No.1 from the date of the application, in addition to the various monthly premiums for the policies of the Respondent No.1, which were paid by the Petitioner.
5. The Magistrate's order was challenged by the Petitioner before the Sessions Court vide Criminal Revision Application No.2/2020. That Revision Application was dismissed by the Sessions Judge, Ratnagiri, vide order dated 04/02/2021, which is challenged before this Court in the present Writ Petition.

6. Respondent No.1 is a minor son of the Petitioner. The Petitioner had got married with the Respondent No.1's mother on 28/12/2008. The Petitioner was serving as a captain on a ship. It is the case of the mother of the Respondent No.1 that she was subjected to physical and mental cruelty for a long period and since February 2012, she alongwith Respondent No.1 was residing at her parent's house at Ratnagiri. She had initiated proceedings under the Protection of Women from Domestic Violence Act, 2005 vide Criminal Misc. Application No.167/2012 before the Judicial Magistrate First Class, Ratnagiri. The application was disposed of on 28/04/2015 and in that application the Petitioner herein was directed to pay the maintenance of Rs.2,80,000/- to the Respondent No.1 and his mother. This is mentioned so in the paragraph No.2 of the impugned order.

7. As far as proceedings u/s 125 of Cr.PC. are concerned, it was contended that the Respondent No.1 was 6 years old, and

was in the 1st standard. His mother had no source of income. The Petitioner was earning Rs.3 lakhs per month towards salary, as he was a captain on a ship. During the course of arguments it was argued that the Petitioner was promoted and at the time of passing of the impugned order, he was drawing salary of Rs.5 lakhs per month. The Petitioner had got married second time and was living with his family in a new flat at Navi Mumbai.

8. The Petitioner had resisted the application u/s 125 of Cr.P.C. by contending that the Respondent No.1's mother was working and was an educated woman. The Petitioner was paying premium of around Rs.15,000/- per month for the investment made in the name of the Respondent No.1.

9. Learned Magistrate, while partly allowing the Respondent No.1's application, held that, considering standard of living of both the parties, the increase in needs of the Respondent No.1 for his education, the increase in the price of essential commodities; the Respondent No.1 was entitled for

interim maintenance of Rs.10,000/- per month in addition to the monthly premium towards various policies taken out for the Respondent No.1. Learned Magistrate granted interim maintenance of Rs.10,000/- per month from the date of the application.

10. The learned Sessions Judge accepted the approach of the learned Magistrate and on the same reasoning dismissed the Revision Application filed by the Petitioner challenging the order of the learned Magistrate.

11. Learned counsel for the Petitioner submitted that the proceeding filed by the Respondent No.1's mother under the provisions of the Protection of Women from Domestic Violence Act, 2005, were ultimately dismissed and the amount of Rs.2,80,000/- was paid as it was agreed between the parties. Therefore this fact had to be taken into consideration while granting maintenance to the Respondent No.1. He further submitted that both the Courts below have ignored the fact that

the Petitioner is paying almost more than Rs.15,000/- per month for premium of the policies drawn in the name of Respondent No.1. He submitted that considering all this, the impugned order be set aside.

12. Learned counsel for the Respondent No.1 opposed grant of prayer of the Petitioner. He supported the orders of learned J.M.F.C. and the learned Sessions Judge.

13. I have considered these submissions. First of all, it must be stated that the challenge was to the interim maintenance granted in favour of the Respondent No.1. The proceeding u/s 125 of Cr.P.C. are still pending. The amount of maintenance of Rs.10,000/- per month only is granted to the Respondent No.1. Considering the standard of living and needs of the child, this amount itself is quite less. The Petitioner is earning admittedly Rs.5 lakhs per month, which is recorded by the Sessions Court in its order as the Petitioner had not disputed that fact. The Petitioner has taken a flat at Navi Mumbai and there he is

residing with his second wife and children from that marriage. The Respondent No.1 is studying in primary school. It is beyond arguments that the Respondent No.1 will need sufficient amount for school fees, for his daily maintenance, food and basic necessities apart from other amenities, to which he is entitled, considering the standard of living of the Petitioner, who is drawing salary of Rs.5 lakhs per month. Both the Courts i.e. J.M.F.C. and the Sessions Court have given sufficient reasons for awarding that interim maintenance to the Respondent No.1. Learned counsel for the Petitioner sought to contend that the Petitioner's wife is not granting access to the Petitioner to enable him to meet the Respondent No.1. If that is so, the Petitioner has other remedies in law. But the child's future cannot be held in ransom for this type of dispute between the husband and wife. The child needs immediate attention for his needs and therefore no inference in this impugned orders is called for. I do not find any merit in the Writ Petition. The Writ Petition is dismissed.

(SARANG V. KOTWAL, J.)