

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.248 OF 2019

1. Jaydeep Jitendra Jagrecha, Age 37 years,
2. Jitendra Vallabhdas Nagrecha, Age 64 years,
3. Dakshaben Jitendra Nagrecha, age 64 years,
All r/o.7-B, 1/2, Sion Sindhi Colony,
Near Gurukripa Hotel, Sion (W),
Mumbai-400 022.

Applicants

versus

1. Dipti Jaydeep Nagrecha, Age 33 years,
R/o.7-B, 1/2, Sion Sindhi Colony,
Near Gurukripa Hotel, Sion (W),
Mumbai-400 022.
2. The State of Maharashtra.

Respondents

WITH
CRIMINAL REVISION APPLICATION NO.206 OF 2019

Dipti Jaydeep Nagrecha, Age 33 years,
Housewife, R/o.103 B, Suba Zircon,
Near Suba International, Chakala,
Mumbai-400 022.

Applicant

versus

1. Jaydeep Jitendra Jagrecha, Age 37 years,
2. Jitendra Vallabhdas Nagrecha, Age 64 years,
3. Dakshaben Jitendra Nagrecha, age 64 years,
All R/o.7B1/2, New Sion CHS,
Sion (West), Mumbai-400 022.
4. The State of Maharashtra.

Respondents

Mr.Ganesh Gole i/by Mr.Aarif Ali M. Ali, Advocate for Applicants in
Revn. Application No.248 of 2019 and for Respondent nos.1 to 3 in
Revn. Application No.206 of 2019.

Mr.Gaurav Parkar, Advocate for Applicant in Revn. Application
No.206 of 2019 and for Respondent in Revn. Application No.248 of
2019.

Mr.Arfa Sait, APP, for Respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 12th August 2022

PC :

1. The revision applicant in Criminal Revision Application No.248 of 2019 is aggrieved by the order dated 31st January 2019 passed by Sessions Court for Greater Bombay in D.V Appeal No.655 of 2018. Applicant no.1 is husband of respondent no.1 and applicant nos.2 and 3 are father and mother of applicant no.1. The marriage between applicant no.1 and respondent no.1 was solemnized on 4th March 2008. On 10th September 2010 a girl child was born out of wedlock.

2. Respondent no1 filed an application u/s.12 of Protection of Women from Domestic Violence Act ('D.V.Act') before the Court of Metropolitan Magistrate, 51st Court, Kurla, Mumbai. During pendency of the said application respondent no.1 preferred interim maintenance application u/s.23 of D.V.Act. Vide order dated 21st August 2018, learned Magistrate partly allowed the said application and husband was directed to pay interim maintenance of Rs.10,000/- p.m to the daughter from the date of application i.e. 9th April 2018 till decision of the main application. The applicants were restrained temporarily to dispossess respondent no.1 and daughter from matrimonial house till disposal of main application.

3. Respondent no.1 in the aforesaid revision application, preferred Criminal Appeal No.655 of 2018 before the Court of Sessions u/s.29 of D.V.Act. Learned Sessions Judge vide order dated

31st January 2019 partly allowed the appeal and order dated 21st August 2018 passed by Metropolitan Magistrate was modified and applicant no.1 was directed to pay interim maintenance of Rs.15,000/- p.m to respondent no.1 herein and Rs.10,000/- p.m to the minor daughter from the date of application i.e. 9th April 2018. It was also directed that interim maintenance already paid by applicant no.1 as per order of Trial Court shall be adjusted in the final payment while calculating arrears of maintenance amount and the liability of respondent no.1. Rest of the order of Trial Court was maintained. The Trial Court was directed to take into consideration the facts brought on record by respondent no.1 in the appeal vide application Exhibit-7 while deciding application under D.V Act finally on merits. The Trial Court was directed to expeditiously deal with the main application under D.V.Act and dispose off the same as early as possible. The revision applicant in Revision Application No.248 of 2019 is aggrieved by order dated 31st January 2019.

4. Criminal Revision Application No.206 of 2019 is preferred by wife challenging order passed by learned Sessions Judge dated 31st January 2019 and seeking direction to the husband to pay Rs.3,00,000/- p.m as maintenance towards expenses to the revision applicant and her daughter. In the alternative it is prayed that husband be directed to pay rent of Rs.75,000/- pm towards alternate accommodation in the vicinity of the school of the daughter.

5. Learned advocate Mr.Gole appearing for applicant in Revision Application No.248 of 2019 and respondent in Revision Application No.206 of 2019 submitted that Trial Court had directed the revision applicant/husband to pay interim maintenance of Rs.10,000/- p.m to the daughter from the date of application. However, learned

Sessions Judge has modified the aforesaid order and directed to pay interim maintenance of Rs.15,000/- p.m to wife additionally. Respondent no.1 is highly qualified working woman she was working before marriage and continued to work after marriage. While working with a company as H.R professional, she was drawing salary of Rs.19,800/-. She is also involved in a company called Catalyst. She talks about her personalized sessions and workshops for business makeovers, digital marketing, HR consulting and business analysis with easy solutions. She conducts exclusive workshops. She has been working since last 11 years. She is proprietor of Pearl Creations. She talks about jewellery creations along with exhibiting designer clothes. She takes orders and customize jewellery. She works on jewellery as well as clothes. Her behaviour was rude. She has misbehaved with the applicants. On several occasions she had left the matrimonial house and resided at her paternal home. On several occasions she had threatened applicants to implicate them in false case owing to which applicant no.1 had preferred written complaint to Senior Police Inspector, Sion Police Station on 6th September 2016. Respondent no.1 had lodged FIR vide C.R No.75 of 2018 with Sion Police Station u/s.498-A, 406, 504, 506, 313 r/w 34 of IPC. She had also filed a private complaint for offences u/s.420, 193, 196, 203 and 209 of IPC. Applicant no.1 had paid school fee and tuition fee of child. He is relying on the statement of amount paid by applicant no.1 towards education, medi claim and maintenance as per order of Trial Court. There was no reason to grant maintenance to respondent no.1 by Sessions Court. The impugned order dated 31st January 2019 is erroneous. Respondent no.1 has earning capacity and it was not necessary to award any maintenance to her.

6. It is submitted that Criminal Revision Application No.200 of 2019 preferred by wife is devoid of merits. She has claimed several reliefs which were neither granted by Magistrate nor by the Sessions Court. The order of Sessions Court is required to be set aside and question of granting relief in the said revision application does not arise.

7. Mr.Gole has relied upon the decision of this Court in the case of **Vijayanand Dattaram Naik and others Vs. Vishranti Vijayanand Naik and others**¹.

8. Learned advocate Mr.Parkar appearing for the revision applicant in Revision Applicant No.206 of 2019 and respondent no.1 in Revision Applicant No.248 of 2019 submitted that learned Magistrate had directed the husband to pay maintenance to the child. Aggrieved by the said order, wife had preferred appeal before Sessions Court and learned Sessions Judge has directed payment of maintenance to wife as well to the child. However, the wife is aggrieved by the fact that husband is capable of paying more maintenance and that other reliefs which are sought in this application were not considered and granted by both the Courts below. The revision applicant/wife has been harassed and ill-treated by respondents-husband is apparent. The respondent-husband has high net worth and has several properties and which are narrated in the application. The husband is the Managing Director of Calton Paints, which has annual turn over of Rs.4.5 crores. However, M/s.Calton Paints is purposely showing losses after tax of around Rs.6,62,005/-. The husband had given crores of unsecured loan

¹ 2019-ALL MR (Cri)-3519

from the personal accounts since 2011. The balance sheet of the financial year 2016-17 shows that amount of Rs.85,65,497/- was given by respondent no.1 from his personal account and respondent no.2 has given Rs.99,98,868/- from his personal account. The applicant/wife is from a middle class family. The claims of the husband that he has earning capacity is false. She has to maintain herself and the child. The order passed by the Court is not complied. Learned Sessions Judge has not considered benefits of respondents and their standards of living. The applicant has to take care of daughter such as accommodation, education, medical expenses, school fee, tuition fee etc..

9. It is pertinent to note that learned Magistrate vide order dated 21st August 2018 has adjudicated interim application preferred by wife seeking interim maintenance. While passing the said order the Court has taken note of various aspects urged by wife. Learned Magistrate had observed that prima facie it appears that applicant-wife is able to maintain herself. Her application is silent about her monthly expenses. At present she is residing in her matrimonial house. Prima facie it appears that she has no liability to maintain herself. Application is silent about how much amount she is required to maintain herself. She appears to be well educated and earning woman. As far as minor daughter is concerned, she is around eight years old and taking education. Therefore, respondent-father is duty bound to maintain expenses of education of daughter. He is under legal and moral obligation to maintain daughter. Prima facie the father has not made any provision towards basic needs of daughter and therefore daughter is unable to get interim maintenance. It is relevant to note that main application is still pending. Learned

Magistrate with the aforesaid reasoning directed that amount of Rs.10,000/- p.m should be paid as interim maintenance to the daughter from 9th April 2018. Aggrieved by the said order wife preferred appeal. Apparently the husband did not challenge first order. Learned Sessions Judge has passed a detailed order and modified the order passed by learned Magistrate. The husband was directed to pay interim maintenance @ Rs.15,000/- p.m to the wife and Rs.10,000/- p.m to the minor daughter i.e. Rs.25,000/- p.m from 9th April 2018. The Appellate Court directed the Trial Court to decide main application expeditiously and also take into consideration the facts brought on record by the appellant-wife in the said appeal. Learned Sessions Judge had observed that considering the facts and circumstances, order passed by Trial Court needs to be modified. Husband is aggrieved by the order passed by Sessions Court and even the wife is also aggrieved by the said order and has claimed the relief in the revision application preferred by her as stated above.

10. Having considered the submissions of both sides and having perused the documents on record, I do not find any reason to interfere in the order dated 31st January 2019 passed by learned Sessions Judge. The revision applicants in Revision Application No.248 of 2019 have not made a case to set aside the impugned order dated 31st January 2019. Similarly the revision applicant in Revision Application No.206 of 2019 has also not made out a case to set aside the order of Sessions Court and grant enhanced reliefs as prayed for in the said revision application. The Trial Court is seized of the matter and it is expected that direction of Sessions Court would be complied. The learned Sessions Judge has adopted

practical approach and enhanced the maintenance. The Court has assigned reasons for the same. Neither the said order could be set aside or modified for further enhancement. Hence, I pass following order :

ORDER

- (i) Criminal Revision Application No.248 of 2019 is rejected;
- (ii) Criminal Revision Application No.206 of 2019 is rejected;
- (iii) Both applications are disposed off.

(PRAKASH D. NAIK, J.)

MST