

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.1977 OF 2016**

Manju Ryal Tixeira @ Manju Tulsi .. Petitioner
Berdiya

Versus

The State of Maharashtra & Anr. .. Respondents

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Mr.Prashant V. Nayak for the Petitioner.

Mrs.Veera Shinde, A.P.P. for the State/Respondent No.1.

Mr.Ryal Tixeria, respondent No.2 present in person.

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CORAM: BHARATI DANGRE, J.

DATED : 23rd JUNE, 2022

P.C:-

1. The present petition is filed by the petitioner/wife challenging the order passed by the Adhoc District Judge & Additional Sessions Judge, City Civil & Sessions Court, Borivali Division, Dindoshi, reducing the amount of maintenance granted in her favour by the Metropolitan Magistrate, 10th Court, Andheri, Mumbai on 07/09/2015 in an application filed under Section 23 of the Domestic Violence Act.

2. Heard the learned counsel for the petitioner. Respondent No.2 is personally present in the Court. When asked, whether he is desirous of engaging the lawyer, he says that he has no resources and means, to engage services of a counsel and, therefore, has chosen to argue the matter himself.

3. The wife preferred an application under Section 12 of the Domestic Violence Act on 28/03/2011 alongwith an application for interim relief. She pleaded that her husband is an Estate Broker and earning a sum of Rs.50,000/- per month. Further it was pleaded that he is having shared household facing Juhu Beach and, therefore, considering the standard of living, she prayed for interim maintenance of Rs.20,000/-. The application was opposed by questioning it's maintainability. The earnings, which were pleaded, were not disputed.

4. Considering the application on merits and recording that respondent/husband has nowhere denied his source of income and also by referring to the amount of rent paid by the husband to the wife, the learned Magistrate was of the opinion that he must pay a sum so that she can maintain herself. A sum of Rs.5,000/- was directed to be paid towards maintenance from the date of the application under the impugned order.

5. The said order was subjected to Appeal before the Appellate Court by filing Criminal Appeal No.98 of 2015 and the Appellate Court, taking into account the fact that the appellant/husband is paying monthly rent of Rs.6,000/- for accommodation, deemed it fit to reduce the sum of Rs.5,000/- to Rs.3,000/- and modified the order passed by the learned Magistrate.

6. Respondent No.2, who is present in the Court, makes a categorical statement that he was working as a Bouncer, but presently he is jobless and is unable to pay the maintenance.

The order passed on 16/08/2013 by the Family Court clearly records that the petitioner/husband, on his own, took up the responsibility to pay rent of Rs.5,000/- to the respondent/wife. With this understanding, the rent was being paid since the wife is residing in the rented premises. Considering the minimum amount, which is required for decent living and inflation persisting, it cannot be said that amount of Rs.5,000/- towards maintenance was exorbitant. The Appellate Court has completely erred in taking account the amount of rent, which the respondent/husband had voluntarily agreed to pay and, particularly, when the earnings of the husband were never disputed. The Protection of Women

from Domestic Violence Act, 2005 contains a specific provision for arrangement for the wife/an aggrieved person, which would include an order for maintenance and the amount of Rs.5,000/- cannot be said to be excessive.

Setting aside the impugned order, the order passed by the learned Metropolitan Magistrate, 10th Court, Andheri, Mumbai on 07/09/2015 is restored. Respondent No.2/husband is liable to pay the maintenance from 19/01/2016, when the learned Appellate Court has modified the order.

7. The writ petition is allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)