

GRM

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

**CRIMINAL WRIT PETITION NO. 4445 OF 2021
WITH
CRIMINAL REVISION APPLICATION NO. 214 OF 2021**

Vilas Masnaji Waghmare ... Petitioner
V/s.
Vandana Vilas Waghmare & Anr. ... Respondents

Ms. Vrushali L. Maindad & Ms. Ankita Nishad, Adv. for
the Petitioner.

Ms. Nasreen Ayubi, Adv. for Respondent no. 1.

Mr. A. D. Kamkhedkar, APP for the State/Respdt. No. 2.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 24, 2022

P.C.:

1. The challenge in the writ petition and the criminal revision application is to the order dated 18th September, 2019 passed by 14th Joint Judicial Magistrate First Class, Vashi in Criminal Miscellaneous Application No. 208/2018 directing the petitioner to pay an amount of Rs. 20,000/- per month towards interim maintenance to respondent no. 1 from the date of order till the disposal of main application and to the order dated 11th August, 2021 passed by the learned Additional Sessions Judge, Thane confirming the order of learned Magistrate granting an amount of Rs. 20,000/- per month towards interim maintenance to the wife.

2. The application has been filed by the wife/respondent no. 1 under Section 23 of Protection of Women from Domestic Violence

Act, 2005 contending that the marriage between petitioner and respondent no. 1 was solemnized in the year 1995. Out of said wedlock, they have four daughters. After giving birth to the fourth daughter in the year 2003, the petitioner abandoned respondent no. 1 and used to threaten her. It is alleged that the petitioner used to have extra-marital affairs with many women. On 17th April, 2018, the petitioner physically and verbally abused respondent no. 1 & four daughters and left the place. The petitioner refused to look after respondent no. 1 and therefore, respondent no. 1 was constrained to file an application for maintenance. Respondent no. 1 along with said application has also filed an application for interim maintenance. The petitioner filed reply denying relationship of husband and wife between him and respondent no. 1. He disputed paternity of four daughters. He submitted that respondent no. 1 forcibly entered into his house. She has stolen property and documents of petitioner.

3. The learned Magistrate recorded a finding that in a proceeding seeking interim maintenance, strict proof of marriage is not required.

4. Respondent no. 1 had placed on record the verified copies of birth certificates of all four daughters along with her election card, caste validity certificate, own aadhar card and also of her four daughters, the invitation card of her marriage and photographs & documents showing relationship with the petitioner. On the basis of said documents, the learned Magistrate recorded a finding that necessary material to prove relationship of husband and wife, is

prima-facie sufficient to establish domestic relationship and birth of four daughters out of said wedlock.

5. The learned Magistrate has also recorded a finding that the petitioner is having immovable properties in his name, which is admitted by him. He held that considering the responsibility of petitioner to look after respondent no. 1, an amount of Rs. 20,000/- per month towards interim maintenance needs to be granted.

6. The learned Additional Sessions Judge by impugned order dated 11th August, 2021, confirmed the said finding holding that considering the earning capacity of petitioner, standard of living of the parties, basic needs of respondent no. 1 and her children, the learned Magistrate was justified in granting interim maintenance of Rs. 20,000/- per month.

7. The learned Advocate for petitioner disputed the relationship between the petitioner and respondent no. 1 as that of husband & wife. According to the petitioner, the delay of 19 years after the marriage, dis-entitles respondent no. 1 from claiming maintenance. According to the petitioner, the documents produced by respondent no. 1 on record do not inspire confidence and thus, the documents could not have been considered. According to the petitioner, the properties received by him, were allotted to the share of petitioner in a family arrangement. Considering the responsibility of family members of the petitioner, the amount of Rs. 20,000/- per month is excessive.

8. *Per-contra*, the learned Advocate appointed to represent respondent no. 1 submitted that both the Courts below have recorded a finding based on the evidence, which can not be termed as perverse. The impugned order doesn't amount to miscarriage of justice. Therefore, no interference is called for.

9. Having considered the submissions on behalf of both the parties, the finding recorded by the learned Magistrate based on the documents on record such as marriage invitation card and election card, which show the name of petitioner as husband and other documents referred in para 6 of the judgment of learned Magistrate, in my opinion, are sufficient at this stage to sustain a finding that the relationship between the petitioner and respondent no. 1 was that of husband & wife.

10. In so far as quantum of maintenance is concerned, considering the nature of properties received by the petitioner from his family, which admittedly stand in the name of petitioner, the income of petitioner, which according to the petitioner, is Rs. 20,00,000/- per year, considering the status of parties, in my opinion, grant of Rs. 20,000/- per month towards interim maintenance can not be termed as unreasonable. Therefore, in my opinion, the orders passed by the Courts below can not be termed as perverse. There is no merit. The petition and revision application are, therefore, dismissed. No costs.

(AMIT BORKAR, J.)