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

WRIT PETITION NO.4090 OF 2019

Anil Bhatia & Ors.

... Petitioners

V/s.

Kashish Bhatia & Anr.

... Respondents

Ms. Chaula Solanki with Mr. H.H. Nagi and Ms. Priyanka Yadav i/by Nagi Associates for the petitioners.

Mr. Raju M. Yamgar with Ms. Bharati Lokhande for respondent no.1.

Mr. A.R. Patil, APP for respondent no.2/State.

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CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 22, 2022

P.C.:

1. The husband has filed this writ petition challenging the order of the learned Sessions Judge in a proceeding arising out of interim order of payment of rent to the wife. The wife has filed proceedings under the Protection of Women from Domestic Violence Act, 2005 before the learned Metropolitan Magistrate. In the year 2013, the respondent no.1 filed an application for grant of monthly rent allowance of Rs.25,000/- (Rupees Twenty Five Thousand Only) which was partly allowed and the petitioner was directed to pay monthly rent of Rs.7,000/- (Rupees Seven Thousand Only) from 21st August 2013. It was challenged by the wife and the learned Sessions Court enhanced it to Rs.17,000/- (Rupees Seventeen Thousand Only).

2. Thereafter, on 23rd February 2017 the wife filed another application for modification of rent allowance initially to Rs.24,000/- (Rupees Twenty Four Thousand Only) and thereafter to Rs.27,000/- (Rupees Twenty Seven Thousand Only). By an order dated 19th December 2017 the learned Metropolitan Magistrate rejected the application. Aggrieved thereby, the wife filed Criminal Appeal No.61 of 2018. The learned Sessions Judge based on the photostat copy of the rent agreement enhanced rent to Rs.24,000/- (Rupees Twenty Four Thousand Only) for the period from 15th May 2015 to 14th May 2017 and Rs.27,000/- (Rupees Twenty Seven Thousand Only) for the period from 15th May 2017 to 14th May 2018. The husband has, therefore, filed present writ petition.

3. Learned advocate for the petitioner submitted that photostat copy of the rent agreement is not admissible in evidence and, therefore, the learned Sessions Court could not have considered the photostat copy of the agreement for the purpose of recording a finding that the rent amount of Rs.24,000/- (Rupees Twenty Four Thousand Only) and thereafter Rs.27,000/- (Rupees Twenty Seven Thousand Only) was paid by the wife towards rent. She submitted that at the relevant time the salary of the husband was Rs.60,000/- (Rupees Sixty Thousand Only) and, therefore, considering maintenance being paid to the child, the amount of rent as sought by the wife is excessive. She also submitted that in the adjoining flat the rent is lesser than the rent which has been claimed by the wife.

4. *Per contra*, learned advocate for the wife submitted that at

the relevant time the gross annual salary for financial year 2017-2018 as per income tax returns was Rs.15,28,186/- (Rupees Fifteen Lakh Twenty Eight Thousand and One Hundred Eighty Six Only). He submitted that as of today the salary of the petitioner is Rs.1,31,000/- (Rupees One Lakh Thirty One Thousand Only) per month and, therefore, the quantum of rent could not be termed as excessive. He submitted that the wife is residing in the same flat from 2011 and the amount of rent of Rs.17,000/- (Rupees Seventeen Thousand Only) as directed in the earlier round was for this flat only.

5. Having considered the submissions made on behalf of both sides, it needs to be noted that the proceedings arising out of application for interim maintenance. It is well settled that the amount of interim maintenance needs to be adjudicated on the basis of *prima facie* documents produced on record which need not be original document. At an interim stage, the parties are entitled to rely on photostat copies. The wider submission on behalf of husband that photostat copies cannot be looked into at the interim stage cannot be accepted. At an interim stage, the scope of inquiry is to consider *prima facie* material on record which is in the form of affidavit or the copies of documents which the parties are entitled to produce before the Court. The provisions of sections 61 & 62 of the Indian Evidence Act, 1872 cannot be imported at the interim stage of DV proceedings, The provisions of the Indian Evidence Act are broadly applicable to the DV proceedings at the stage of trial. The concept of production of original document is in the context of sections 61 and 62 of the Indian Evidence Act, 1872.

Chapter V of the Indian Evidence Act, 1872 is broadly applicable to the domestic violence proceedings at the time of full fledged trial and, therefore, the submission made on behalf of the petitioner that photostat copy of the rent agreement cannot be read in evidence at the stage of interim proceedings cannot be accepted.

6. The learned Sessions Judge has relied on the photostat copy of the agreement produced by the wife which showed that the rent for the period from 15th May 2015 to 14th May 2017 was Rs.24,000/- (Rupees Twenty Four Thousand Only) and for the period from 15th May 2017 to 14th May 2018 it was Rs.27,000/- (Rupees Twenty Seven Thousand Only). The enhancement of rent is based on the documentary evidence in the form of rent agreement. Insufficiency of material is no ground to interfere in the extraordinary jurisdiction of this Court. The document in the form of income-tax return for FY 2017-2018 shows that the annual income of the petitioner at the relevant time was Rs.15,28,186 (Rupees Fifteen Lakh Twenty Eight Thousand and One Hundred Eighty Six Only).

7. Considering the nature and scope of the proceedings arising out of orders of interim maintenance, the scope of petition is restricted to perversity or findings based on no evidence. In the absence of material to show miscarriage of justice. Interference in the extraordinary writ jurisdiction of this Court is not called for.

8. There is no merit in the writ petition. The writ petition is accordingly dismissed. No costs.

(AMIT BORKAR, J.)