

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

CRIMINAL WRIT PETITION NO. 6291 OF 2021

Bhupendra Chudgor ...Petitioner
Versus
The State of Maharashtra and Anr. ...Respondents

Mr. Aadil Parsurampuriah i/b Mr. Prashant Parsurampuriah, for the Petitioner.

Ms. Anamika Malhotra, A.P.P for the Respondent No.1– State.

Ms. Vidhya Mangavde, for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.

DATE : 7th JANUARY 2022

(THROUGH VIDEO CONFERENCING)

P.C. :

1. Heard learned counsel for the parties.
2. By this petition, the petitioner has impugned the order dated 2nd December 2021, passed in Criminal Appeal No.776 of 2019, by which the learned Additional Sessions Judge, Court Room No.37, Mumbai, allowed the petitioner's Criminal M.A. No.2573 of 2019 and stayed Clause Nos.3 and 4 of the impugned Judgment and Order dated 16th September 2019, on the condition that the petitioner deposit 50% of the arrears of monthly maintenance due against him from 16th September 2019 within one month

from 2nd December 2021. Vide the said order dated 2nd December 2021, the petitioner was directed to continue to deposit Rs.10,000/- per month before 5th of each month without fail, till the decision of the Appeal. 3 consecutive defaults in depositing would entail vacating of the stay. All the amounts were directed to be deposited before this Court and Criminal M.A. No.2573 of 2019, came to be disposed of.

3. Learned Counsel for the petitioner submits that the petitioner is unemployed and is unable to deposit the money so directed by the learned Additional Sessions Judge. He submits that initially the petitioner's mother and subsequently his sister is paying the property tax and other taxes of the house, where the petitioner and the respondent No.2 are residing. He submits that the petitioner is aged 63 years and is currently unemployed. Learned Counsel for the petitioner further submits that the amount of deposit be further reduced by another 50% i.e. Rs.5,000/- per month, without prejudice to the petitioner's rights and contentions.

4. Learned Counsel for the respondent No.2 vehemently opposed the petition. She submits that no interference is warranted in the impugned

order dated 2nd December 2021. She submits that the respondent No.2 has not received a single penny from the time the domestic violence proceedings were filed by her before the learned Magistrate and as such is unable to sustain herself. She denied that the petitioner is unable to maintain or is without any source of income. She further submits that it is infact the respondent No.2 who is without any source of income and finding it extremely difficult to meet two ends.

5. Perused the papers. *Prima facie*, no fault can be found in the impugned order dated 2nd December 2021 directing the petitioner to deposit 50% of the arrears of monthly maintenance from 16th September 2019 nor any case is made out for reducing the said amount, as of today.

6. However, without going into the merits, it would be appropriate to permit the petitioner to deposit Rs.10,000/- per month from September 2020 instead of September 2019, for the time being, till his Appeal is decided. Accordingly, the petitioner to deposit the arrears from September 2020 onwards till date i.e. 50% of the said amount within one week from today and the balance 50% within one week thereafter. The

petitioner shall continue to deposit Rs.10,000/- as directed by the Sessions Court every month i.e. on the 5th of the month, till the Appeal is finally decided. The said amounts however will be deposited by the petitioner directly in the account of the respondent No.2 instead of depositing the same in the Court, so that the respondent No.2 is not required to file applications for execution of the said order/for seeking the monies so deposited.

7. The order dated 2nd December 2021, passed the learned Additional Sessions Judge, Court Room No.37, Mumbai, in Criminal Appeal No.776 of 2019, stands modified to the extent as stated aforesaid. If there is a single default in depositing the said amounts as stated aforesaid, the stay granted by the Appellate Court shall stand vacated. Instead of 3 consecutive defaults in depositing the amount, even if there is one single default in depositing the amount, the stay granted by the Appellate Court shall stand vacated. Thus, the order of the learned Additional Sessions Judge, also stands modified with respect to the same.

8. Needless to state, that the stay granted by the Sessions Court shall continue to operate as long as the petitioner complies with the order passed by this Court today.

9. It is made clear, that this Court has not gone into the merits of the petition and as such all contentions of all parties are kept open. It is also made clear that the order directing deposit from September 2020 shall not be considered as a waiver of the deposit from September 2019. It is made clear, that it is only till the petitioner's Appeal is finally decided.

10. Petition is accordingly disposed of on aforesaid terms. However, having regard to the facts and the age of the petitioner and the respondent No.2, the hearing of the Appeal as well as M.A filed in the Appeal is expedited. The learned Judge shall decide the appeal as well as the M.A as expeditiously as possible and in any event within 6 months from the date of receipt of this order.

11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.