

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.370 OF 2019
WITH
INTERIM APPLICATION NO.3338 OF 2021**

Rajesh Ramdas Nival .. Applicant

Versus

Alka Rajesh Nival & Ors. .. Respondents

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Mr.Shailendra Pendse for the Applicant.

Mr.Abhijeet J. Kandarkar for the Respondent No.1.

...

CORAM: BHARATI DANGRE, J.

DATED : 15th JULY, 2022

P.C:-

1. The present revision application is filed, being aggrieved by the concurrent finding rendered by the learned Magistrate and the learned Additional District Judge, thereby directing the applicant to pay an amount of Rs.30,000/- to the wife regularly, on deducing the amount paid under the interim order, as living allowance. The amount of Rs.2,00,000/- has been directed to pay by way of loss of compensation and Rs.5,000/- has been directed to be paid towards expenses.

2. Briefly referring to the marital discord between the parties, it is recorded that the marriage between the two was solemnized on 29/07/2001 and out of the said wedlock, two children are born. Though the relationship between them remained cordial for some period of time, on the allegation that the applicant misbehaved with the respondent and also did not show any inclination towards the upbringing of the children and instead, he always created atmosphere of tension in the house and was abusive to the children and the wife and at times, resorted to assaulting them, the relationship became strained. In the years 2005 and 2007, complaints were lodged by the respondent against the applicant, but it is alleged that no actions were taken. Unable to bear further, the physical and mental harassment, the respondent/wife started residing with her brother from 20/01/2012.

3. The applicant filed a petition for restitution of conjugal right in the Family Court bearing P.A.No.564 of 2011 and by judgment dated 14/02/2017, the petition has been allowed and the respondent/wife is directed to resume conjugal company of the applicant.

Suffice it to mention that the said judgment is not executed and is subjected to challenge.

4. The respondent/wife filed proceedings under the Domestic Violence Act and she also filed an application under Sections 12, 18, 19, 20, 21 and 23 of the Domestic Violence Act, seeking multiple orders as regards residence, protection, maintenance for the children and herself.

5. On 06/04/2011, the learned Magistrate passed an interim order, restraining the husband from committing domestic violence against the applicant therein and also further restrained him from frequenting the school of the children. By way of positive direction, the husband was directed to pay maintenance of Rs.1,000/- per month to each of the applicant till disposal of the case and he was also directed to bear the rent of the accommodation of the applicants, at the rate of Rs.3,000/- per month till final disposal of the case.

6. The said application came to be finally determined by the learned Magistrate on 19/12/2017 and continuing the earlier direction that the applicant/husband shall not harass the children by contacting them or their relatives, a direction was issued to pay monthly maintenance of Rs.30,000/- from the date of the application, after deducting the amount of interim maintenance. The litigation expenses were also directed to be provided alongwith a sum of Rs.2,00,000/- by way of

compensation for harassment caused.

7. The said order came to be upheld by the learned Additional Sessions Judge in Criminal Appeal No.39 of 2018, by recording that quantum of maintenance that has been awarded is justified in wake of the earnings of the husband, being Rs.80,090/- excluding deductions. Referring to the evidence brought on record and considering that the daughter was of 15 years and the son was aged 9 years at that time, the order of maintenance came to be upheld.

These two orders are subjected to challenge in the present revision application.

8. The learned counsel for the applicant makes a categorical statement, on instructions from the applicant, who is present in the Court, that he does not want to contest the liability that has been fastened upon him by the impugned order, directing him to pay monthly sum of Rs.30,000/- for the wife and two children.

As far as the compensation of Rs.2,00,000/- awarded under the impugned order is concerned, the learned counsel for the applicant, on instructions, makes a statement that the said amount has been paid.

9. The learned counsel states that he would seriously contest the order passed by the learned Magistrate, directing him to pay maintenance from the date of the application i.e. 25/03/2010, when an order was passed on 19/12/2017. His submission is that the impugned order does not record a single reason for directing the amount to be paid from the date of the application and not from the date of passing of the order.

He would place reliance upon the decision of the Hon'ble Supreme Court in the case of ***Jaiminiben Hirenghai Vyas & Anr. Vs. Hirenghai Rameshchandra Vyas & Anr.***¹, where Their Lordships of the Apex Court have directed all the courts to follow the procedure prescribed in Section 354(6) of the Cr.P.C., which make it imperative for the Court to record reasons in support of the order and particularly in the backdrop of an application granting interim maintenance under Section 125, when the question arises whether it shall be granted from the date of the application or from the date of the order and it has been held that, in both the eventualities, the Court must record the reasons.

Further, the learned counsel would submit that from the year 2010 when the application was filed by the wife till the

1 (2015) 2 SCC 385

date of it's decision in the year 2017, he was already paying a sum of Rs.3,000/- towards maintenance and Rs.3,000/- towards rent. His further submission is that the applicant was always ready and willing to cohabit with the wife and the children and, therefore, he had filed a petition for restitution of conjugal right, but for her own belief and convenience, the respondent shifted from matrimonial house alongwith children. Further, by inviting my attention to her cross-examination, where she has given clear admission to the effect that the applicant had cared for children and arranged for their educational and other expenses, it is submitted that the learned Judge has completely erred in directing the payment of maintenance from the date of the application.

10. Per contra, learned counsel for the respondents would submit that though some admissions have come on record from the evidence of the wife, but it was not the case that he was regularly arranging for payments and she had to borrow the amount from her brother to make a living for herself and her children. He would submit that the educational expenses of the children being exorbitant, at times, the wife had to deal with the difficult situation when the husband faulted in paying the amount of maintenance. Hence, his submission is that the

Courts are perfectly justified in directing the amount of maintenance to be paid from the date of the application.

11. On perusal of the impugned orders passed by the learned Magistrate, it is apparent that he has not recorded any specific reason why the amount of maintenance is directed to be paid from the date of the application. Sub-section (6) of Section 354 of the Cr.P.C. contemplates that every final order shall contain the points for determination, the decision thereon and the reasons for the decision. It is apparent that whenever a judgment or an order is passed, it should be supported by reasons and when it is directed that the maintenance amount shall be paid from the date of the application, in absence of any statutory provision to that effect, the learned Judge is expected to record the reason why he is directing the payment to be made from the date of the application and not from the date of the order. There may be reasons justifying the same as wife being left destitute alongwith the children and, since, she being in dire need of money and, therefore, the dependents shall not be deprived of the amount of maintenance.

However, as far as the present case is concerned, when the cross-examination of the wife is carefully read, she has given the following admissions:-

- (a) Admission had provided for son Yash only;
- (b) It is true that Respondent had provided swimming classes for both children;
- (c) It is true that Respondent had celebrated birthday of the children. It is true that I and Respondent had taken the children for picnic at Kolhapur, Ujjain, Kashmir, Delhi, Bomaby and Bhoom Tank. It is true that I and Respondent were visiting the hotel for hotelling sometimes;
- (d) It is true that whenever I was sick, the Respondent has taken me to the dispensary;
- (e) It is true that Respondent was pending personally for the household grocery materials;
- (f) It is true that Respondent has spent fully for food, education for son Yash and daughter Sanjana.

12. The respondent/wife has candidly admitted that the husband, even during the estranged relationship, cared for herself and her children. She also gave specific admission that whenever she sought assistance, the husband had taken her to the dispensary. Thus, since the time when the application was pending before the learned Magistrate on it being filed on 25/03/2010 till it's decision, the wife herself had admitted that

husband has taken care of educational expenses fully and other needs of the children.

In this contingency, from the evidence brought on record, it is apparent that she and her children were not left at the mercy of someone else, but he took care of the grocery i.e. day-to-day expenses, extra curricular activities of the children, educational expenses, also celebrated their birthday and even entertained them in hotels.

In the wake of the aforesaid admissions surfacing on record, it can be discerned that the impugned order directing the maintenance to be paid from the date of the application, cannot be sustained though as far as the interim order directing maintenance is concerned, it is indicated that the amounts so directed to be paid, shall be deducted from the monthly maintenance amount of Rs.30,000/-.

The learned Additional Sessions Judge has also failed to consider the said aspect of the matter and, therefore, the said order also cannot be sustained.

13. Retaining direction Nos.2, 3, 5 and 6 in the impugned order any by only modifying direction No.4 to the extent of directing the applicant to pay maintenance from the date of

the order i.e. 19/12/2017, the impugned order passed by the learned Magistrate is upheld. It do not warrant any interference, since the learned counsel for the applicant has graciously submitted that he will take up the responsibility of paying maintenance of Rs.30,000/- as directed.

In the wake of the modification in the order, the amount of maintenance directed to be paid, shall be recalculated and it shall be borne in mind that the applicant owes a responsibility of payment of Rs.30,000/- per month from 19/12/2017. If there are any arrears, upon calculation, the applicant shall clear the same within three months from the date of passing of this order.

14. Criminal Revision Application stands disposed off in the aforestated terms.

15. In view of the disposal of the revision application, interim application does not survive and stands disposed off.

(SMT. BHARATI DANGRE, J.)