

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.287 OF 2022

Petitioner : **Vishant Samadhan Sonone,**
(Ori. N.A.1) Aged 37 years, Occ. Nil,
R/o. Flat No.404, 'Q' Building,
4th Floor, Madhuwanti Apartments,
Nanded City, Sinhagad Road, Pune – 411 041.

– Versus –

Respondent : **Neha Deepak Tidke,**
(Ori. Applicant) (mentioned in petition as Sau. Neha Vishant Sonone),
Aged 28 years, Occ. Service,
R/o. C/o. Deepak Kashiram Tidke,
R/at BSNL Staff Quarters, Nandura Road,
Khamgaon, Tah. Khamgaon, Dist. Buldana.

Mr. A.A. Dhawas, Advocate for the Petitioner.
Mr. M.P. Kariya, Advocate for the Respondent.

CORAM : **VINAY JOSHI, J.**
DATE : **13th SEPTEMBER, 2022.**

ORAL JUDGMENT:-

01] **Rule.** Rule made returnable forthwith. Heard finally by consent of both the learned Counsel for the parties.

02] The petitioner-husband has impugned herein the order dated 28/01/2022 passed by the appellate Court whereby declined to grant stay to the order of the trial Court pertaining to grant of interim maintenance in the

proceedings filed under the Protection of Women from Domestic Violence Act (D.V. Act). The respondent-wife has initially filed an application in terms of Section 12 of the D.V. Act in the Court of the Magistrate claiming multiple reliefs as available under the different provisions of the D.V. Act. In the said application, the wife has applied for grant of interim maintenance. The husband resisted the application. After considering the factual aspect, the learned Magistrate has granted interim maintenance at the rate of Rs.20,000/- per month from the date of application i.e. from 08/01/2015.

03] Being aggrieved and dissatisfied by the said order, the petitioner-husband has filed appeal in terms of Section 29 of the D.V. Act, wherein he has also applied for grant of stay. The appellate Court while rejecting the application for stay, primly considered that the husband is having definite salaried income as well as he has not paid the arrears.

04] The learned Counsel for the petitioner would submit that the wife is earning salaried income to the tune of Rs.30,000/- per month, which has not been considered by the trial Court. *Per contra*, the respondent's learned Counsel submitted that the wife has lost the earlier job and now she is working as a LIC Agent from which she hardly earns Rs.9,000/- to Rs.10,000/- per month. Besides that, undisputedly the husband is a Software Engineer

and earning salary to the tune of Rs.1,16,000/- per month. Needless to say that the wife is entitled to have the same standard of living as the husband does have. It is a disputed question of fact whether the wife is having sufficient earning for which the appeal is already pending. However, the fact remains that on date, the wife is doing some sort of work for gain from which she earns at least Rs.9,000/- per month.

05] The arrears have been mounted to the extent of Rs.19,00,000/-. In pursuance of the order of this Court, the petitioner has only deposited an amount of Rs.1,00,000/- in this Court. One has to be mindful of the fact that yet the parties have to lead evidence as the main application is pending. Moreover, the appeal against the interim order is also pending, therefore, much deliberation on facts is not required as it would cause prejudice to the parties. Having regard to the financial position of both parties and as yet the legality of the order of the Magistrate is to be tested, the order of maintenance can be stayed provided by making workable arrangement.

06] In view of that, the following order is passed :

- (i) The petition is partly allowed.
- (ii) The impugned order dated 28/01/2022 is hereby quashed and set aside.

- (iii) Application for stay is allowed subject to petitioner depositing Rs.5,00,000/- (Rupees Five Lakhs Only) within three months from today towards arrears of maintenance and go on depositing Rs.10,000/- (Rupees Ten Thousand Only) per month on regular basis till disposal of the appeal.
- (iv) The respondent is permitted to withdraw the amount of Rs.1,00,000/- (Rupees One Lakh Only), which has been deposited in this Court.
- (v) The appellate Court shall endeavour to expeditiously decide the appeal as it is against the interim order.
- (vi) Rule is made absolute in the above terms with no order as to costs.

(VINAY JOSHI, J.)

**sandesh*