

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

CRIMINAL REVISION NO.71/2021

Shri Irshad Khan s/o Akil Ahmad Khan,
aged Major, Occ. Service, r/o Plot No.152,
Noori Colony, Noori Masjid, Nara Road,
Nagpur.

.....APPLICANT

...V E R S U S...

1. Afsha Irshad Khan,
aged 36 years, Occ. Service,
r/o Nahar Road, M.S.E.B. Colony,
Rajeev Gandhi Chowk, Bhandara,
Tq. Dist. Bhandara.
2. Arsh s/o Irshad Khan,
aged 9 years, through his natural
guardian mother Afsha Irshad Khan

...NON APPLICANT

Mr. Amit Khare, Advocate for applicant.
Mr. A. Subhan, Advocate for non applicant.

AND
CRIMINAL REVISION NO.113/2021

1. Afsha Irshad Khan,
aged 36 years, Occ. Housewife,
2. Arsh s/o Irshad Khan,
aged about 9 years, Occ. Student.

Both applicants r/o Nahar Road,
M.S.E.B. Colony, Rajeev Gandhi Chowk,
Bhandara, Tq. Dist. Bhandara.

.....APPLICANTS

...V E R S U S...

1. Shri Irshad Khan s/o Akil Ahmad Khan,
aged 38 years, Occ. Service.

2. Fahmida w/o Akol Ahmad Khan,
aged 66 years,

Non applicant nos. 1 and 2
r/o Plot No.152, Noori Colony,
Noori Masjid, Nara Road, Nagpur.

3. Tarannum w/o Firoz Khan Kannoje,
aged 41 years, Occ. Housewife.

4. Firoz Khan s/o Habib Khan Kannoje,
aged 46 years, Occ. Service,

Non applicant nos. 3 and 4 are
r/o Near Gandhi Nagar Layout,
Jafar Nagar, Nagpur.

Alternate address: Near Biyani
Petrol Pump, Tukhum Road,
Chandrapur.

...NON APPLICANTS

Mr. A. Subhan, Advocate for applicants.
Mr. Amit Khare, Advocate for applicants.

CORAM:- AVINASH G. GHAROTE, J.
DATED :- 19.07.2022

ORAL JUDGMENT

Heard the learned respective counsels in both the
revisions. **Admit.** The learned counsels waive notice for their
clients on merits. Heard finally by consent of learned counsel for
the parties.

2. Learned Magistrate, by judgment dated 05.06.2018, in Domestic Violence Case No.1/2014, partly allowed the complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (For short, the “DV Act”), filed by the wife and directed that applicant/wife be paid a maintenance of Rs.6000/- per month and applicant no.2-son be paid a maintenance of Rs.4,000/- per month. A further amount of Rs.8,000/- per month was directed to be paid for residence. Compensation of Rs.10,000/- was also awarded with costs of Rs.5000/- and household articles indicated therein were directed to be returned. This judgment, was challenged in an appeal by the husband as well as the wife before learned Sessions Court, who by a common judgment dated 12.06.2020 dismissed both the appeals. Criminal Revision No.113/21 is by the wife against the order granting maintenance and claiming enhancement of maintenance and compensation. Criminal Revision No..71/2021 is by the husband, claiming that the finding rendered by the Courts below that there was domestic violence was not justified.

3. Mr. Subhan, learned counsel for the wife and son, raises a passionate plea that the amount of maintenance granted to the wife and son was too meager considering the salary of the

husband at the relevant time. He submits that the salary of the husband in the year 2014 was Rs.1,12,575/- which after deduction came to Rs.71,000/-, out of which what has been granted on account of maintenance as well as cost of residence was an amount of Rs.14,000/- in totality. He, therefore, submits that considering the income of the husband, a minimum of 25% of the income was the reasonable amount which ought to have been granted to the wife and the son. Reliance is placed on *Dr.Kulbhushan Kumar vs. Smt. Raj Kumari and anr*,¹ (paras 21 and 22), *Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy*² (Para 15), wherein **Dr. Kulbhushan** (supra) was followed. He submits over a period of time, the salary of the husband has also increased, so also the cost of living and educational expenses have also increased and there should be commensurate increase in the quantum of maintenance.

Insofar as the compensation is concerned, that also, according to him, requires an upward increase for which reliance is placed upon *Saraswathy Vs. Babu*,³ (Para 24).

1 1970 (3) SCC 129

2 (2017) 14 SCC 200

3 (2014) 3 SCC 712

4. Mr. Khare, learned counsel for the husband, opposes the submission and submits that the husband has remarried and also has a child from the said marriage. It is contended that the mother of the husband is also residing with him and therefore the quantum of maintenance granted is appropriate. He further submits that the finding rendered by the learned Magistrate, that there was domestic violence, is also incorrect considering that there is no material whatsoever brought on record by the learned Magistrate to arrive at this conclusion. Insofar as the evidence is concerned, according to him, there is only oath versus oath inasmuch as the wife has examined herself and the husband has examined himself on this issue. It is therefore submitted that there is no substantiation of the allegations considering which, finding rendered in this regard, according to him, is liable to be set aside.

5. In rebuttal, Mr. Subhan, learned counsel for the wife, submits that affidavit of assets and liabilities filed by the husband at page 40 in Criminal Revision No.71/21 would indicate that expenses to the tune of Rs.12,000/- pm were being made for the purpose of education of the son from the second marriage and therefore the expenses for the son from the first marriage should be commensurate.

6. Insofar as the contention by Mr. Khare, learned counsel for husband, that the finding regarding domestic violence needs to be quashed and set aside, a perusal of the judgment rendered by the learned Magistrate shows that he has relied upon the evidence of the wife at Exh.36, in which specific incidents have been quoted regarding demands of Rs.5,00,000/- and a four wheeler, of abuses, assaults and the contention that she had been driven out of the matrimonial house at which point of time the husband had kept her in the rest house at Katol. The cross-examination of the wife, does not indicate anything being brought out therein, to assist the husband. Evidence of wife has, therefore, been appropriately considered by the learned Magistrate as well as the learned Sessions Court to arrive at a finding that there was a domestic violence, considering which, I do not find any merit in Criminal Revision No.71/2021. The same is accordingly dismissed.

7. Insofar as claim for enhancement is concerned, it is an admitted position that as of date the salary of the husband has increased to Rs.1,43,579/- which, after deduction comes to Rs.1,13,385/-. The affidavit of assets and liabilities is placed on record in Criminal Revision No.71/2021 by the husband, which indicates that a sum of Rs.12,000/- is being spent upon the son

from the second marriage, Rs.6,000/- as school fees and Rs.6,000/- as transportation charges. It is, therefore, apparent that considering the passage of time from 2014 till today there has been an increase in quantum of expenses for the education of the son from the first marriage, considering which, in view of the increase in income, commensurate increase in the quantum of maintenance would be justified. Considering the quantum of salary being received by the husband, as of now, I deem it appropriate, that a monthly maintenance of Rs.10,000/- would be appropriate, for the educational expenses and maintenance expenses of the son considering that over a period of time, there has been a substantial increase in that regard, which would take care, of his school fees as well as transportation charges also. The enhancement of compensation insofar as the son is concerned shall be from the date of the application.

8. Though reliance is placed upon **Dr. Kulbhushan Kumar** (supra) and **Kalyan Dey Chowdhury** (supra), the circumstances in the instant matter, are quite different inasmuch as the husband, has remarried, and has obligations of the second wife and child also which have to be taken into consideration, in view of which, on facts, the same cannot be applied.

9. Insofar as quantum of compensation awarded to the wife is concerned, it cannot be on a fixed percentage but depends upon facts of each case. The wife is already getting Rs.6,000/- per month as maintenance which, in my considered opinion, is a reasonable amount. Considering what has come on record before the learned Magistrate, I do not feel that the quantum of compensation granted to the wife is inappropriate. Criminal Revision No. 113/2021 is, therefore, partly allowed in the above terms. No order as to costs.

JUDGE

kahale