

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

CRIMINAL APPLICATION (APPP) NO.1713 OF 2021
IN
CRIMINAL APPLICATION (APL) NO.744 OF 2019

(Sau. Seema Narendra Diwre and another Vs. Narendra Pandurang Diwre and others)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. P. S. Gawai, Advocate for Applicants
Mr. H. M. Mohta, Advocate for Non-Applicants/Respondents.

CORAM: VINAY JOSHI, J.

DATE: 9th JUNE, 2022.

Heard.

2. The applicant – husband seeks modification in para 12 of the order by which this Court has disposed of two Criminal Applications bearing No.744/2019 and No.96/2021 by common order dated 04.03.2021. It is a dispute in between husband and wife. Initially, wife has preferred an application for maintenance by resorting to the provisions of Protection of Women from Domestic Violence Act, 2005 ('D.V. Act'). On merit, the learned Magistrate has granted maintenance to the tune of Rs.3000/- per month to the wife and Rs.1000/- per month to minor child living with mother. Being aggrieved by said order, both have preferred appeals bearing Criminal Appeal No.23/2017 and Criminal Appeal No.29/2017, seeking rival claim i.e. for reduction

and enhancement of maintenance amount. The learned Sessions Judge while deciding appeal has refused to entertain the appeal preferred by the husband. However, by allowing the appeal filed by the wife has modified and enhanced the maintenance for wife from Rs.3000/- per month to Rs.5000/- per month and for child Rs.1000/- per month from Rs.2000/- per month. Again both remained dissatisfied and therefore, filed two criminal applications which are disposed of by mutual consent.

3. Both husband and wife had arrived on mutual arrangement about the quantum of maintenance on which both were decided by common order dated 04.03.2021.

4. Perusal of the said order indicates that amount of maintenance for child was enhanced from Rs.2000/- per month to the extent of Rs.10,000/- per month. However, the said order dated 04.03.2021 does not bare reference regarding maintenance amount awarded to wife by Sessions Court. In view of that the wife has filed application for speaking to minutes on which this Court vide order dated 29.06.2021 has clarified that the amount awarded to the wife towards maintenance at the rate of Rs.5000/- per month by Sessions Court remained undisturbed. The said order indicates that this position was conceded by both sides and therefore, the clarification was recorded.

5. On such background the applicant – husband seeks modification in para 12 of the final order dated

04.03.2021. There was no dispute about the quantum of maintenance recorded by this Court while disposing both application. The dispute is only in respect of the date from which the maintenance amount has to be paid. The learned counsel for the applicant – husband would submit that this Court while disposing of both applications in para 12 has stated that the new arrangement would come into force from the date of preferring the application for maintenance, instead of mentioning that from the date of application under Section 482 of the Criminal Procedure Code before this Court.

6. Pertinent to note that this Court has passed the final order on 04.03.2021. It is informed that in presence of both the sides the order was dictated in open Court. Thereafter, on 29.06.2021 this Court gave certain clarifications as above mentioned, however, no grievance was put at that juncture. Normally, the maintenance amount shall be paid from the date of application moved to the first Court. Para 12 of this order is quite clear to indicate that the new arrangement shall be from the date of application for maintenance meaning thereby from the date when the wife has first moved the Magistrate for maintenance. The said order was passed by mutual consent.

7. After gap of several months there is no propriety to alter or modify the order which makes a see difference. The intention is quite clear to provide maintenance to the wife from original application.

8. Hence, the present application moved by husband does not bear any substance and accordingly rejected.

JUDGE

NSN