

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 246 OF 2020

Dr. Premraj s/o Rajaram Chavan
& another

Petitioners

Versus

Dr. Leena w/o Premraj Chavan

Respondent

Mr. B. R. Kedar, Advocate for the petitioners.

Mr. M. V. Navandar, Advocate for the respondent.

WITH

CRIMINAL WRIT PETITION NO. 249 OF 2020

Dr. Premraj s/o Rajaram Chavan
& another

Petitioners

Versus

Dr. Leena w/o Premraj Chavan

Respondent

Mr. B. R. Kedar, Advocate for the petitioners.

Mr. M. V. Navandar, Advocate for the respondent.

WITH

CRIMINAL REVISION APPLICATION NO. 93 OF 2020

Dr. Leena w/o Premraj Chavan

Applicant

Versus

Dr. Premraj s/o Rajaram Chavhan & others

Respondents

Mr. M. V. Navandar, Advocate for the applicant.

Mr. B. R. Kedar, Advocate for all respondents.

CORAM : R. M. JOSHI, J.
RESERVED ON : 11th JULY, 2023.
PRONOUNCED ON : 13th JULY, 2023.

ORDER

1. Petitioners – husband and father-in-law have filed Criminal Writ Petition No. 246/2020 and 249/2020 taking exception to order dated 13th January, 2020 passed by learned Additional Sessions Judge, Jalgaon in Criminal Appeal No. 153/2018 and 146/2018 respectively. Applicant wife in Criminal Revision Application No. 93/2020 is challenging order dated 13th January, 2020 passed in Criminal Appeal No. 153/2018 for seeking enhancement of maintenance and compensation.

2. The factual matrix of the present case in short can be narrated as follows :-

Dr. Premraj and Dr. Leena (hereinafter referred to as 'husband' and 'wife' for the sake of brevity) got married on 12th March, 2009. There is no issue out of the said wedlock. Both have qualification of B.A.M.S. and they are doctors by profession. There is further no dispute about the fact that they are serving as Medical Officer with the Government at different places. After marriage, they

started cohabitation at Dhule. It is the case of the wife that while they were living together, there was harassment caused to her by husband and in-laws. There is also allegation of demand of money from her. She further alleged that husband used to suspect her fidelity and used to harass and beat her at the instigation of in-laws. It seems that thereafter they started residing separately. Wife preferred application being Criminal M.A. No. 296/2013 under the provisions of Protection of Women from Domestic Violence Act (hereinafter referred to as "DV Act") seeking reliefs of protection order, maintenance and compensation with specific averments that she was subjected to domestic violence. The said application came to be partly allowed by judgment dated 5th September, 2018. Father-in-law of the applicant was restrained from causing any harassment to her. The husband was directed to pay Rs.10,000/- per month towards maintenance from the date of application and Rs. 3,000/- per months towards house rent. A direction was also issued to pay compensation of Rs. 1,00,000/- under Section 22 of the Act and cost of Rs. 5,000/-. Rest of the prayers were rejected.

3. Husband and father-in-law were aggrieved by the said order and hence they preferred Criminal Appeal No. 146/2018

challenging the order passed by the Trial Court. Wife was also aggrieved by the quantum of maintenance, non grant of other reliefs and compensation, hence, she preferred Criminal Appeal No. 153/2018. Learned Appellate Court dismissed Criminal Appeal No. 146/2018 and confirmed the order passed in Criminal M.A. No. 296/2013. Criminal Appeal No. 153/2018 however, came to be partly allowed with enhancement of compensation and amount of maintenance.

4. Learned counsel for the husband and father-in-law contended that the Appellate Court, while deciding Criminal Appeal No. 146/2018 has committed error in confirming the order passed by learned Judicial Magistrate First Class and modifying the same in Criminal Appeal No. 153/2018. According to him, such contradictory view in respect of the same order cannot be sustained. It is also contended that Appellate Court dismissed appeal filed by husband and father-in-law without considering the fact that both husband and wife are equally qualified and the wife was also employed and earning and therefore, it is not a case that she is unable to maintain herself. In support of his contention, number of case laws are relied upon.

5. Apart from filing written arguments, learned counsel for wife has not only opposed petitions filed by husband and father-in-law but according to him, the learned Trial Court has not rightly considered the income of the husband and that the amount of maintenance, rent and compensation is granted unreasonably at lower rate. It is contended that income of husband from private practice is not considered by both Courts below and proof of salary is also ignored. According to him the harassment caused to the wife by father-in-law by defaming her is ignored. It is also argued that the amount of compensation can not be determined on the basis of the income of husband but only on the ground of incidents of domestic violence. On these amongst other submissions, enhancement of compensation, maintenance and rent is sought. To support his contention he also placed reliance on various precedents.

6. This Court has carefully gone through written submissions and the case laws relied upon by both the sides. There cannot be dispute about the fact that wife is aggrieved person and in domestic relationship with the petitioners, within the meaning of Sections 2(a) and 2(b) of DV Act. There is specific pleading in the application before Magistrate giving instances of domestic violence

including economic abuse. Economic abuse as per explanation (iv) to Section 3 of DV Act includes deprivation of all or any economic or financial resources to which aggrieved person is entitled to under any law or custom. This is however not limited to the necessities for aggrieved person. Admittedly, husband and wife are Hindus and governed by Hindu Adoption and Maintenance Act (hereinafter referred to as "Maintenance Act"). Under Section 18 of the Maintenance Act, husband is liable to maintain his wife even in case the wife resides away from her matrimonial home. It is also trite law that the wife would be entitled to same standard of living which she was enjoying while living with husband. Provisions of the DV Act mandate the husband to provide shelter to the wife.

7. If the contention of wife in the application is read coupled with the evidence on record, then it is clear that husband is earning more income than the wife. From the cross-examination of husband, it is brought on record by the wife that initially he used to pay rent of the house as well as clinic. He further admits that there is bungalow consisting of about 8 to 10 rooms. Though it is denied that he is also doing private medical practice and earning income, the material evidence on record clearly indicates that the husband has no

responsibility of parents as his father is retired person and receiving pension and further, he is having properties. Learned Magistrate, while passing order in question, has taken into consideration the material evidence on record and has recorded reasons for grant of Rs. 10,000/- per month as maintenance, Rs.3,000/- towards rent and Rs. 1,00,000/- towards compensation. The Trial Court has taken into account fact that wife is also employed but awarded maintenance by observing that there is economic abuse and to bridge the gap between standard of living of husband and wife, maintenance is granted. It is also considered that husband used to pay rent of clinic of wife. Trial Court also took cognizance of evidence on record to observe that there is no evidence to show that husband is earning Rs. 50,000/- per month by private practice and it is also recorded that wife has admitted of not having any documents to prove the said fact.

8. Though it is sought to be argued now on behalf of wife that it is not possible to get the premises on rent for Rs. 3,000/- as directed by Trial Court, but no evidence is led by wife to show rate of rent prevailing in area where she lives. No fault can be found with the direction issued by Trial Court quantifying rent at Rs. 3,000/- per

month. The learned Trial Court, after considering the nature of domestic violence, status of parties and income of husband, has rightly awarded compensation of Rs. 1,00,000/-.

9. Section 22 of DV Act deals with compensation, which reads thus :-

22. Compensation orders :- In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress caused by the acts of domestic violence committed by the respondent.

No doubt, it enables the Magistrate to grant compensation in addition to other reliefs, for injuries including mental, physical and emotional distress, caused by acts of domestic violence. But the act does not provide mechanism for calculation of the compensation. Needless to state that the emotional distress and mental torture caused can never be determined in terms of money. As far as physical abuse is concerned, in case of causing of injury/disability compensation may be determined by taking aid of provisions under Motor Vehicle Act or Workmen Compensation Act,

for the purpose of calculation of amount. However, by and large, it would be discretion of the Magistrate to award compensation after taking into consideration social and financial status of parties. There is no gainsaying that the income of husband would not be relevant for determining compensation as canvassed on behalf of the wife.

10. Considering the facts and circumstances of the case and evidence led by rival parties, this Court finds no error committed by learned Trial Court in passing judgment in question. On the other hand, learned Appellate Court has modified the said order and enhanced the amount of compensation, maintenance and rent, without recording reasoning and appreciating evidence on record. It is vaguely stated in the order that Magistrate has failed to consider money required in todays age and that quantum of rent is less. It is also held that while awarding compensation, defamation of wife is not considered. Most importantly, enhancement granted by Appellate Court has no cogent reasoning or justification. It only based on surmises and conjectures. Hence, order of Appellate Court of enhancement cannot sustain.

11. The law on the point of exercise of writ jurisdiction is squarely settled to state that there can be interference in any impugned order if it is found to be without jurisdiction or led to miscarriage of justice. Of course, it is open for the Writ Court to cause interference in such order if the same is passed in ignorance of the material evidence on record or by way of mis-interpretation thereof. This Court, therefore, cannot re-appreciate the evidence on record and draw different findings than the one reached at by the learned Trial Court. The challenge to the order passed by learned Trial Court therefore must fail.

12. It is however made clear that the parties to the proceeding under DV Act would be entitled to approach Magistrate for modification of said order on the basis of change in the circumstances under Section 25 of the DV Act. Hence, the following order :-

ORDER

(i) Criminal Revision Application No. 93/2020 is dismissed.

(ii) Criminal Writ Petition No. 249/2020 is dismissed.

(iii) Criminal Writ Petition No. 246/2020 is allowed. Judgment dated 13th January, 2020 passed by learned Additional Sessions Judge in Criminal Appeal No. 153/2018 is quashed and set aside.

(iv) Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

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