

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.119 OF 2022
WITH APPLN/1225/2022 IN REVN/119/2022

ABDUL MUBIN S/O ABDUL RAZZAK
VERSUS
NAZIYA AFRIN W/O ABDUL MOBIN AND ANOTHER

...
Advocate for Applicant : Mr. Yogesh Bolkar h/f. Mr. Eknath G. Irale
Advocate for Respondents : Ms. Fatema S. Kazi
...

CORAM : S. G. MEHARE, J.

DATE : 03-03-2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned counsel for the respondents.
2. The order granting interim maintenance of Rs.4000/- per month under the Protection of Women from Domestic Violence Act, 2005, passed by the learned Judicial Magistrate, First Class, Court No.9 Aurangabad, below Exhibit-5, dated 24.01.2019, in PWDVA No.753 of 2017, and confirmed by the learned Additional Sessions Judge, vide judgment and order passed in PWDV Appeal No.27 of 2019, dated 24.02.2022, has been impugned.
3. The learned counsel for the applicant/husband has vehemently argued that the learned Magistrate has determined

the quantum of maintenance only on the basis of income shown by the respondent/wife. He was having no such income as pleaded by her. The learned Magistrate did not consider the family responsibilities of the husband. The income, the wife was fetching, is also not given attention. The conduct of the respondent/wife has also not been considered. She stayed with the applicant/husband from 13.02.2020 till December 2020. Even then, the husband has been asked to pay interim maintenance for the said period. In the absence of specific evidence or proof of income, the order granting maintenance of Rs.4000/- per month is harsh and arbitrary. Therefore, the order needs to be set aside.

4. Per contra, the learned counsel for the respondent/wife has argued that the applicant has good income from the pan shop. He also does the business of selling land. He has no family responsibilities. His mother runs a grocery shop. The domestic violence has been *prima facie* proved. The wife has no income source. Therefore, the learned Magistrate has correctly discarded plea that she had the source of income from private coaching classes. Considering the inflation of the day, amount of Rs.4000/- per month is small and meager. Though the settlement has arrived at before the Court to stay together from 13.02.2020, the applicant/husband did not keep them with him and asked them to stay with her parents saying that it was Covid-19 period, he had no source of income. Therefore, the maintenance granted for the said

period cannot be deducted. She prayed to dismiss the application.

5. The applicant did not file an affidavit declaring his income before the Court. He is well bodied person. He came with a case that he does the work with Pan shop. The respondent/wife is knowing better the source of income of her husband. There was no evidence before the Court that the applicant has family responsibilities and no income at all.

6. So far as the maintenance for the period from 13.02.2020 till December 2020 is concerned, the wife admitted before the Court that in view of terms of settlement dated 12.02.2020, they started cohabiting. So, she cannot deny that she was not with him from 13.02.2020 till December 2020. It may be presumed that for the said period, the applicant/husband maintained the wife and child. For this period, he would not be burdened to pay the maintenance in addition to money, he spent over them. However, considering the inflation of the day, the quantum of maintenance of Rs.4000/- per month appears just and reasonable. Therefore, that can not be disturbed. The applicant has no good case for interference with the impugned orders except exempting the applicant/husband from maintenance for the period from 13.02.2020 till December 2020. Hence, the following order :-

ORDER

(i) The application is partly allowed.

- (ii) The order granting interim maintenance of Rs.4000/- is maintained. However, the applicant would not be liable to pay the maintenance of Rs.4000/- per month for the period from 13.02.2020 till December 2020, subject to the evidence before the Court that during the trial that the respondent/wife and her child did not stay with him. If the wife fails to prove that she did not stay with him for the above period, the maintenance amount for the said period shall not be exempted or adjusted in future.
- (iii) The applicant/husband to clear the arrears within three months from today.
- (iv) Criminal Application No.1225 of 2022 stands disposed of.

**(S. G. MEHARE)
JUDGE**

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