

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

21 CRIMINAL WRIT PETITION NO.824 OF 2023

SUNIL VITTHALRAO KHAMBKAR
VERSUS
SADHANA W/O. SUNIL KHAMBKAR AND ANOTHER

...
Advocate for Petitioner : Mr. Amol G. Vasmatkar
Advocate for Respondents No.1 and 2 : Mr. A.A. Phad

...

CORAM : R. M. JOSHI, J.
DATE : AUGUST 28, 2023

PER COURT :

. Heard finally by consent of both sides.

2. This petition takes exception to the order dated 08.02.2023 passed by the learned Additional Sessions Judge, Ambajogai in Criminal Appeal No.27 of 2016 whereby order dated 06.05.2016 passed by the learned Judicial Magistrate First Class, Parli Vajnath in Criminal Misc. Application No.156 of 2013 is confirmed.

3. The petitioner is husband of respondent no.1 and father of respondent no.2. Respondent No.1 filed application bearing Criminal Misc. Application No.156 of 2013 seeking reliefs under Sections 12, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act (for short, 'DV Act'). There is no dispute about

the fact that the petitioner is married respondent no.1 on 28.02.2002 and respondent no.2 is their son.

4. Learned counsel for the petitioner submits that respondent no.1 is employed and as such, she can maintain herself and her son. It is his further contention that the learned Magistrate has committed an error in directing the petitioner to pay a sum of Rs.10,000/- which includes Rs.5,000/- for medical expenses and Rs.5,000/- towards educational expenses of Respondent no.2. By referring to the evidence on record, it is sought to be argued that the testimony of Dr. Wanage shows that the expenses required for the child would not exceed Rs.6,000/- per month. Thus, according to him, without there being any evidence on record, the learned Magistrate has wrongly arrived at the finding that the sum of Rs.10,000/- per month would be required for the child. He further argued that assets and liabilities are filed, declined by respondent no.1 and on this ground also the impugned order cannot sustain.

5. Learned counsel for the respondents opposed the said contention by submitting that the petitioner herein has failed to lead any evidence before the learned Magistrate. By relying upon the

evidence of the respondent no.1 as well as the testimony of the doctor, it is submitted that respondent no.1 has sufficiently demonstrated before the Magistrate about the requirement of the child. As far as the declaration of assets and liabilities is concerned, it is contended that no such plea has been raised either before the Magistrate or even before the Appellate Court and hence, at this stage the same cannot be taken into consideration.

6. There is no dispute about the fact that the petitioner and respondent no.1 shared matrimonial relationship and respondent no.2 is their son. Admittedly, respondent no.2 has serious health issues since childhood and that he has already undergone several surgeries. Evidence of Dr. Wange indicates that medical treatment of the child is still continued and he is required to be taken to the doctor at least once in two months. The medical certificate proved by him indicates that child is required minimum Rs.6,000/- per month medical expenses. Respondent no.1 examined herself and also led evidence in respect of the requirement of medical / educational expenses for her son. There is no denial about the fact that the petitioner herein failed to enter into witness box and lead evidence in rebuttal. The

respondent no.1 has discharged the initial burden of proving her case before the learned Magistrate and that the onus has shifted upon the petitioner to lead evidence in rebuttal. In absence of any evidence led in order to disprove the contention of the respondent no.1, it is not open for the petitioner to take exception to the order passed by the learned Magistrate.

7. No doubt, there cannot any dispute about the preposition canvassed by learned counsel for the petitioner that since respondent no.1 is also employed, she is required to share the expenses of the child. In this regard however it is material to note that the learned Magistrate in the impugned order has observed that the child requires Rs.15000/- to 19000/- per month to meet his educational as well as medical expenses. Then after direction is issued to the petitioner to pay Rs.10,000/- per month for the maintenance of the child. Practically, therefore Magistrate has called upon mother to share almost 50% expenses of child. Moreover, having regard to the evidence led before Magistrate, the amount of maintenance quantified is reasonable and not exorbitant. Thus, on both counts, there is no reason to cause interference in the said order.

8. Perusal of the memo of appeal filed before the Appellate Court does not show any specific challenge to the order of Magistrate arriving at amount of expenses required for the child per month. Even otherwise, having regard to the age of the child and the medical expenses required for him, the quantum decided by the learned Magistrate for the purpose of meeting those expenses at Rs.19,000/- per month is just and proper.

9. Refusal of Appellate Court for causing interference in order passed by Magistrate, is fully justified in facts of the case. Hence petition stands dismissed.

[R. M. JOSHI]
JUDGE

GGP