

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1041 OF 2022

SHAIKH SHAFIQ SHAIKH RASHEED

VERSUS

HEENAKAUSAR W/O. SHAIKH SHAFIQ AND ANOTHER

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Advocate for Petitioner : Mr. Shaikh Tarek Mobin h/f Mr. Mohsin M. Khan

Advocate for Respondents : Mr. Quadri Tabrezuddin Rahimuddin

...

CORAM : KISHORE C. SANT, J.

DATE : 30th JANUARY 2023.

Per Court :

Heard.

1. This is a petition by the husband that though he has produced the certificate showing that his monthly income is only Rs.9000/- by producing on record the salary certificate issued by his employer. The learned Judge has not considered those certificates and he has not applied his mind.

2. Looking to the impugned order, it appears that the Court has in fact taken a note of the certificates, however only by observing that the

petitioner/husband had an ample opportunity to file his income proof before the trial Court. However, the same is not filed. Thus, the entire thrust of the petitioner is that he should have been given an opportunity either to lead the evidence in view of changed circumstances or that the Sessions Court on its own should have considered these certificates. It is for this reason, this Court is inclined to remand the matter to the trial Court i.e. the Court of learned JMFC, Aurangabad, so as to give opportunity to husband to lead proper evidence. At the same time, it would be open for respondent/wife also to lead further evidence if required in respect of income of the petitioner/husband. It is stated that by way of interim order, the husband was directed to pay Rs.5,500/- towards maintenance of both the respondents and monthly house rent. The learned Advocate for the petitioner submits that the same arrangement be continued till final disposal of the proceeding of PWDVA Case No.2898/2013.

3. The learned Advocate for respondents vehemently opposed the said arrangement. He submits that just to dodge the responsibility, the husband has now produced these fresh salary certificates and has not

taken care to produce the same in the trial Court. He submits that now the amount of arrears is about Rs.4,80,000/-. He submits if at all the matter is to be remanded, the petitioner be directed to clear the arrears. Considering above, the following order.

ORDER

- (i) The matter is remanded to the Court of learned JMFC, Aurangabad.
- (ii) The learned Magistrate shall decide the proceeding i.e. PWDVA Case No.2898/2013 afresh by considering only the aspect of the income of the husband and for that purpose shall give opportunity to both the parties to lead evidence.
- (iii) The learned trial Court shall try to dispose off the main proceeding as early as possible and preferably within six months from today.
- (iv) This order is subject to deposit of Rs.2,00,000/- by the petitioner in the trial Court within six weeks from today and shall continue to deposit Rs.5500/- as per the bifurcation given by the learned Sessions Court. In view of this, both the orders are quashed and set aside.

- (v) It is made clear that if there is a default in payment of the amount of Rs.5500/-, the trial Court is free to pass necessary orders in that respect.
4. With this, the Writ Petition is disposed off.

[KISHORE C. SANT, J.]

Najeeb.