

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 206 OF 2018

Mrs. Anjali Sandip Shekokar ...Applicant

Versus

1. Shri Sandip Eknath Shekokar
2. Shri Eknath Shrawan Shekokar
3. Mrs. Shobha Eknath Shekokar
4. Shri Pradip Eknath Shekokar
5. Mrs. Pranita @ Pratibha Pradip Shekokar
6. Mrs. Pratibha Sanjay Bavaskar
7. Shri. Sanjay Amrut Bavaskar
8. Shri. Sanjay Tukaram Tayade
9. The State of Maharashtra

...Respondents

Mr. P. S. Shendurnikar, Advocate for the Applicant.
Mr. G. V. Wani, Advocate for Respondent Nos. 1 to 8.
Mr. G. O. Watamwar, APP for Respondent No. 9.

CORAM : R.M. JOSHI, J.

DATE : JULY 27, 2023

ORDER

1. This Revision is filed under Section 397 of CrPC taking exception to the judgment and order passed by Additional Sessions Judge-2, Bhusaval in Criminal Appeal No. 185/2014 (old criminal appeal no. 100/2013), which came to be filed by wife for enhancement of the amount of maintenance granted by learned JMFC, Raver, Dist. Jalgaon by order dated 16.08.2013 passed in

S.C.C. No. 670/2010.

2. The facts which led to the filing of the present Application can be summarized as under:

The marriage between Applicant and Respondent No. 1 was solemnized on 17.05.2005. Out of said wedlock, son was born on 27.09.2006. It is the case of the Applicant that she was deserted and driven out from matrimonial home by her husband and in-laws after subjecting her to physical and mental cruelty. The Applicant, therefore, filed proceedings under the Protection of Women from Domestic Violence Act (for short '**DV Act**') being S.C.C. No. 670/2010. In the said proceeding maintenance of Rs. 25,000/- per month and other reliefs were sought. It is the case of the Applicant that the Respondent No. 1 is serving as lecturer in Nutan Maratha Junior College, Jalgaon and drawing salary of Rs. 45,695/- in the year 2013. Applicant led oral evidence as well as produced salary certificate and other documents on record to substantiate her case. It is also sought to be contended that for the month of August, 2017 salary of Respondent No. 1 was Rs. 59,062/-.

3. Learned JMFC partly allowed the application and directed maintenance of Rs. 7,000/- per months payable to the Applicant. It is the case of the Applicant that learned JMFC has failed to appreciate the evidence on record in granting the amount of maintenance. Hence, on that count an Appeal came to be filed under Section 29 of the DV Act being Criminal Appeal No. 100/2013 before Additional Sessions Court, Jalgaon. By passing impugned judgment and order, the said Appeal came to be dismissed.

4. Heard learned Counsels for both sides.

5. At the outset, this Court needs to clarify that the contention of the Applicant about the Respondent No. 1 drawing salary of Rs. 59,062/- in the year 2017 cannot be considered for the purpose of enhancement of the amount of maintenance. Section 25 of the DV Act provides for remedy to the aggrieved person or Respondent for alteration/modification of the order on change in circumstance. Increase of salary of Respondent subsequent to passing of impugned order amounts to change in circumstances. Section 28 of the Act makes provision that save otherwise provided in the

Act, all proceedings are governed by Code of Criminal Procedure. In view of specific provision of Section 25 which deals with alteration/modification of order on change in circumstance, neither in Appeal nor in Revision, such modification can be permitted. Hence, the said fact is not taken into consideration for the purpose of decision of this revision. It is however open for the Applicant to take appropriate steps under Section 25 of DV Act for modification of the order on the basis of change in circumstance, if so desire.

6. With regard to the claim of enhancement of maintenance amount on the evidence led by the Applicant is concerned, there is documentary evidence to show in the year 2013 Respondent No. 1 was drawing salary of Rs. 45,695/-. Further sound financial condition of the Respondent – husband is also brought on record. There is also material to indicate that he has no other responsibility. Evidence further indicates that the Respondent has big house. In this backdrop, Respondent Husband was unable to show that he is required to spent money for his parents or family members from the salary earned by him. Thus, it can be safely concluded that

Respondent – husband enjoys his entire income for himself.

7. While determining the question of maintenance, learned JMFC has considered the deductions carried out from the salary of the Respondent No. 1 – husband and held that he is drawing net salary of Rs. 18,065/-. On the basis of this amount, the maintenance is granted at Rs. 7,000/- per month. This Court finds substance in the contention of learned Counsel for the Applicant that the trial Court has committed error in accepting all deductions as permissible without taking into consideration settled position of law that only statutory deduction can be allowed to be made from gross salary. In the instant case, for the purpose of the calculation of amount of maintenance considering evidence on record only deductions towards G.P.F., provident fund and income tax i.e., total sum of Rs. 3,450/- only could have been taken into account. The learned Trial Court, therefore, fell in error in deducting contributions towards society and insurance policy to arrive at income of Respondent for deciding quantum of maintenance. Thus, after statutory deduction

a sum of Rs. 42,295/- would be available for the Respondent to spend. The quantum of maintenance, therefore, deserves to be determined on this amount.

8. Needless to say that Applicant wife is entitled to maintain same standard of living as she was enjoying while in the company of Respondent in the matrimonial home. She, therefore, can rightfully claim residence in big enough house. Section 20(1)(d) entitles the aggrieved person to claim maintenance for herself as well as her children, if any. In the instant case, need of the minor child also cannot be ignored. Needless to say that minor child is of growing age and mother is required to incur expenses for education and other needs. The amount of maintenance payable to her, therefore, can in no case be less than $1/3^{\text{rd}}$ salary of Respondent.

9. Having regard to the right of Applicant wife to maintain status at par enjoyed by her in matrimonial home and also considering her additional responsibility to take care of needs of the child, she is entitled to receive an amount of Rs. 15,000/- as maintenance. Since, learned trial Court committed serious error of

fact and law while determining quantum of maintenance and learned Appellate Court has failed to correct the said error, both orders cannot sustain. Resultantly, Criminal Revision Application deserves to be partly allowed. Hence, the order:

ORDER

- (i) Order dated 26th April, 2018 passed in Criminal Appeal No. 185/2014 (old criminal appeal no. 100/2013 stands dismissed.
- (ii) Order dated 16th August, 2013 passed in S.C.C. No. 670/2010, stands modified and Respondent is directed to pay maintenance to the Applicant @ Rs. 15,000/- (Rupees Fifteen Thousand Only) per month.
- (iii) The aforesaid observations are restricted to the decision of this revision only. The Court below shall not get influenced by the said observations while dealing with any other application filed by the respective parties.

(R.M. JOSHI, J.)

Malani