

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 52 OF 2023**

Barsat Naik Gaonkar	... Petitioner
<i>Versus</i>	
Bhargavi Naik Gaonkar	...Respondent

Ms. Sapna Mordekar, Advocate *for the petitioner.*

Mr. A. D. Bhobe, Advocate *with Ms. Shaizeen Shaikh,
Advocate for the respondent.*

**CORAM: PRAKASH D. NAIK, J
DATED: 3rd AUGUST 2023**

ORAL ORDER

1. Heard learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondent.

2. The petitioner has challenged the order dated 30.07.2022 passed by the learned JMFC 'B' Court, Quepem, below Exhibit-1 in Criminal Case No. 02/DVA/2019/B directing the petitioner to pay monthly interim maintenance of Rs.17,000/- to the respondent and her daughter until further orders as per Section 20 of the Protection of Women from Domestic Violence Act, 2005, (hereinafter referred to as 'DV Act').

3. The petitioner has also challenged the order dated 15.02.2023 passed by the learned Additional Sessions Judge, South Goa, Margao

in Criminal Appeal no. 85/2022, thereby dismissing the appeal preferred by the petitioner challenging the order of the first Court granting maintenance.

4. Learned Advocate for the petitioner submitted that both the orders passed by the Courts below are erroneous. The Courts have not taken into consideration the income of respondent. The directions issued by the Apex Court in the case of **Rajnesh vs. Neha & anr.** reported in **(2021) 2 SCC 324** with regards to filing of affidavit of assets and liabilities was not followed. While granting maintenance, the Courts have not taken into consideration the income of the respondent as well as the petitioner.

5. During the pendency of the appeal preferred by the petitioner challenging the order dated 30.07.2022, the petitioner had received an envelope relating to the bank account of the respondent which would indicate that she has income that could be taken into consideration by the Court. The order granting maintenance is arbitrary and requires to be set aside. It is further submitted that the impugned orders may be set aside and the matter be remanded to the first Court for deciding the issue relating to the maintenance by following all the aspects including the income of the respondent and for complying the directions of the Apex Court in the case of **Rajnesh Vs. Neha & anr.** (supra). It is further submitted that the

petitioner was not in a position to pay the maintenance on account of his income. He had borrowed loan for paying the arrears of maintenance. It is thus prayed that the impugned orders be set aside.

6. Learned counsel for the respondent submitted that the Court of learned Magistrate as well as Sessions Court, has taken note of all the aspects with regards to the income of both the sides and passed the impugned orders. He drew my attention to the observations of the first Court in paragraphs 12 and 13 of the impugned order dated 30.07.2022. It is submitted that the petitioner has been avoiding payment of maintenance in the light of order dated 14.07.2023 passed by this Court. The petitioner was supposed to come with a schedule regards payment of balance amount towards arrears of maintenance. There are arrears of about Rs.5,00,000/- excluding the amount of Rs.2,00,000/-, which is already paid to the petitioner. It is submitted that no interference is warranted in the impugned orders passed by the Courts below.

7. Perused the impugned orders passed by the Court of learned JMFC as well as Sessions Court. I find that the orders are well reasoned and the first Court has taken note of the aspects of the income of the petitioner and directed him to pay the maintenance of Rs. 17,000/-. It is pertinent to note that the Court had granted interim maintenance. Although the affidavit as contemplated in

aforesaid decision was not filed, the learned Magistrate has analyzed the aspects relating to income of parties. The quantum of maintenance directed to be paid by petitioner is not unreasonable. The purported bank account revealed to the petitioner through envelope is no ground to remand the case back to trial Court by setting aside the impugned orders. The application initiated by the respondent under Section 12 of the DV Act is still pending which would proceed in accordance with law.

8. Considering the reasons assigned by the trial Court which were confirmed by the Sessions Court while dismissing the appeal, I do not find any reason to interfere with the impugned orders. Hence, I pass the following order:

ORDER

(i) The Criminal Writ Petition is dismissed.

(ii) The petitioner shall pay the arrears of maintenance.

PRAKASH D. NAIK, J

ANDREZA PEREIRA

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