

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 92 OF 2022**

SNEHA VIRAJ SHIRODKAR ... Petitioner.
VS
VIRAJ PRADEEP SHIRODKAR ...Respondent.

Mr. Somnath Karpe and Ms. Siddhi Parodkar, Advocate for the petitioner.
Mr. John A. Lobo, Advocate for the respondent.

CORAM: PRAKASH D. NAIK, J
DATED: 30th August 2023

ORAL ORDER

1. The petitioner is aggrieved by order dated 30.3.2021 passed by the learned Additional Sessions Judge-1 in Criminal Appeal No.95 of 2019 to the extent of quantum of maintenance.
2. The petitioner and respondent were civilly married on 10.5.2013 and the marriage was solemnized on 2.5.2014. It was registered on 6.6.2013. Two children were born out of the wedlock. There was matrimonial discord between the parties. There was incompatibility. Petitioner has initiated proceedings under Protection of Women from Domestic Violence Act, 2005 which are number as Criminal Case No.1/DVA/2019/D pending before the Court of learned Judicial Magistrate, First Class at Vasco. Petitioner has prayed for several reliefs including

maintenance, protection under Sections 18 and 19 of the Act.

3. Petitioner filed an application under Section 23 of the Act seeking maintenance. Vide order dated 8.5.2019, the Court directed that the respondent shall pay monthly interim maintenance of Rs.5,000/- to the petitioner from the date of application until further orders.

4. Petitioner preferred Criminal Appeal no.95 of 2019 before the Court of Sessions, South Goa, Margao. Learned Additional Sessions Judge vide order dated 30.3.2021 enhanced the quantum of maintenance to Rs.10,000/- per month.

5. Respondent has not challenged the orders granting maintenance and enhanced maintenance.

6. Learned counsel for the petitioner submitted that maintenance awarded by Courts below is inadequate. The petitioner has no income. Petitioner has to look after two minor children. The Courts below failed to take into consideration expenses towards maintenance of the children including food, clothing, books, school fees etc. Bank statement produced on record indicates that respondent was remitting to the petitioner a maintenance cost of Rs.23,000/- every month before the children were born. Respondent is working abroad. He was remitting approximately sum of Rs.20,000/- to Rs.23,000/- per

month. Respondent had produced bank statement along with his reply which would depicts that from the month of June 2014 to August 2018 an amount of Rs.23,000/- has been deposited by the respondent towards monthly expenditure. The minor children are aged around 5 and 3 years. Petitioner had provided description as to monthly expenditure and there is no reason to disbelieve the same. For a period of about four years respondent was parting a sum of Rs.23,000/- per month and hence, the petitioner was entitled for sum of Rs.25,000/- per month. Learned trial Court and appellate Court did not appreciate the basic requirements for grant of maintenance. The Courts below ought to have considered the bank pass book produced by the respondent which shows that respondent was remitting amount as stated above towards monthly expenditure to the petitioner.

7. Learned counsel for the respondent submitted that although the bank entries indicate that the amount as stated herein above was remitted to the petitioner, respondent was working at that point of time and subsequently on account of loss of employment there was no sufficient income to pay towards maintenance. Respondent has complied with the orders passed by the Courts below. The Court of learned Magistrate had directed maintenance of Rs.5,000/- which has been enhanced to

Rs.10,000/- by the Court of Sessions, respondent has submitted to the orders of the Court and did not challenge the said orders. In absence of proof of substantial income of the respondent, maintenance awarded by the lower Court is adequate and it was not possible for the respondent to pay maintenance beyond the quantum awarded by the Court of learned Magistrate. It is highly difficult for the respondent to pay maintenance of Rs.10,000/- per month.

8. The documents on record does indicate that respondent had transferred the amount to the account of the applicant during the period stated above. The contention of the respondent is that subsequently his financial position has weakened on account of lack of employment. Learned Magistrate vide order dated 8.5.2019 has observed that petitioner has not given the details as to how she has calculated the amount of Rs.25,000/- per month claimed by her towards maintenance from the respondent. The affidavit of assets and liabilities were not on record. Learned Magistrate directed the respondent to pay Rs.5,000/- per month. The contention of the respondent is that previously he was working on board/ship and was regularly depositing Rs.20,000/- to Rs.25,000/- every month which is evident from the statement of account.

Although he had gone to UK in January 2020 he is unemployed due to COVID-19 pandemic and has no source of income. The applicant/petitioner has not justified the claim of Rs.25,000/- per month.

9. Learned Session Judge while deciding the appeal observed that the test for determination of the maintenance in matrimonial dispute depends upon the financial status of the husband and the standard of living that the wife was accustomed to in her matrimonial house as observed by the Apex Court in ***Rajnish Vs. Neha and ors. (MANU/SC/0833/2020)***. In the case in hand wife has not stated in any manner the financial status of the respondent nor petitioner's standard of living and as observed by trial Court, did not indicate how she calculated the amount of Rs.25,000/-. However, considering the case of the respondent that he was depositing Rs.20,000/- to Rs.25,000/- per month into the account of wife which was withdrawn by her and that he is unemployed, amount of Rs.10,000/- per month as interim maintenance is reasonable and realistic.

10. There are no arrears of maintenance. The Courts below have considered the grant of interim maintenance. The main proceedings are still pending before the Court except the bank statement. As stated above there are no details of the financial

status of the respondent.

11. Considering the aforesaid circumstances, by way of interim maintenance, respondent can be directed to pay an amount of Rs.15,000/- per month towards maintenance from the date of this Order and not from the date of application.

ORDER

- i. Order dated 30.3.2021 passed by the learned Addl. Sessions Judge-1, South Goa, Margao in Criminal Appeal No.95 of 2019 is modified.
- ii. Respondent is directed to pay Rs.15,000/- per month to the petitioner towards maintenance from the date of this order.
- iii. Proceedings in Criminal Case No.1/DVA/2019/D pending before the Court of Judicial Magistrate, First Class, Vasco da Gama, are expedited.
- iv. The trial Court is directed to decide the proceedings within six months from the date of receipt of this order.
- v. Criminal Writ Petition No. 92 of 2022 stands disposed of.

PRAKASH D NAIK, J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS NAIK
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