

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 395 OF 2022

Saumitra Narain

.Applicant

Versus

Nishu Prasad & Anr.

.Respondents

Mr. Anil M. Dubey, Advocate for the Applicant

Mr. Pradip Chavan a/w Trupti Chavan i/b Pradip Chavan &
Associates, Advocates for the Respondent No.1

Mr. H. J. Dedhia, APP, for the Respondent - State

CORAM : MADHAV J. JAMDAR, J.

DATED : 15 SEPTEMBER 2023

P.C.:

1. Heard Mr. Dubey, learned Counsel appearing for the Applicant, Mr. Chavan, learned Counsel appearing for Respondent No.1 and Mr. Dedhia, learned APP appearing for the Respondent-State.

2. The Applicant-Husband by the present Criminal Application filed under Section 482 of the *Code of Criminal Procedure, 1973* (“CrPC”) is challenging the legality and validity of the Order dated 22nd March 2021 passed by the learned Metropolitan Magistrate, 34th Court, Vikhroli, Mumbai below Exhibit 3-A in

Criminal Case No.26/DV/2021 as well as the Order dated 11th February 2022 passed by the learned Additional Sessions Judge, City Civil & Sessions Court, Greater Bombay in Criminal Appeal No.165 of 2021.

3. The learned Metropolitan Magistrate by the said Order dated 22nd March 2021 directed the Applicant-Husband to pay an interim monetary relief of Rs.30,000/- (Rupees Thirty Thousand only) per month to the Respondent No.1-Wife and Rs.20,000/- (Rupees Twenty Thousand only) per month to the son of Applicant and Respondent No.1 from the date of the Application preferred by the Respondent No.1-Wife under Section 23 of the *Protection of Women from Domestic Violence Act, 2005* (“**DV Act**”). The learned Metropolitan Magistrate has also restrained the Applicant herein who is the Opponent in said D.V. proceedings from abetting, aiding, committing, attempting to commit any kind of physical, verbal, emotional or economical abuse on the Respondent No.1-Wife and further directed that the copy of the said Order be supplied to the Protection Officer and Senior Police Inspector of concerned Police Station for the implementation of the same. The learned Additional Sessions Judge, City Civil & Sessions Court, Greater Bombay by the Order dated 11th February 2022 dismissed the said Appeal with a cost

of Rs.10,000/-.

4. Mr. Dubey, learned Counsel appearing for the Applicant raises following contentions:

- i) Affidavit of Disclosure as directed by the Hon'ble Supreme Court in the decision of *Rajnish v. Neha*¹ has not been filed by Respondent No.1-Wife and therefore the impugned Order passed by the learned Metropolitan Magistrate suffers from material irregularity.
- ii) There is a violation of the principles of natural justice and the Applicant-Husband has not been granted a proper opportunity to make his case in his defence.
- iii) The salary slips of the Applicant-Husband show that his net income is substantially less and therefore the Order granting maintenance of an aggregate amount of Rs.50,000/- per month is excessive and unreasonable.

5. Mr. Chavan, learned Counsel appearing for Respondent No.1-Wife has advanced the following contentions:

- i) As far as the said 'Affidavit of Disclosure' is concerned, the relevant information required as per *Rajnish* (supra) is provided in the Application filed under Section 23 of the DV Act which is annexed to the Revision Application from page nos. 71 to 76. The

¹ (2021) 2 SCC 324

said 'Affidavit of Disclosure' has been filed in the Appellate Court and therefore the directions of the Supreme Court as per *Rajnish* (supra) are complied with.

ii) As far as the contention regarding violation of principles of natural justice is concerned, the Applicant-Husband has refused to accept the service of the Notice of hearing and therefore he is not entitled to advance the said contention and seek benefit thereof.

iii) As far as the contention that an excessive and unreasonable interim relief amount has been granted by the learned Magistrate, the submission is that if compulsory deductions are factored in and accounted for, then the interim maintenance granted by the Order dated 22nd March 2021 is not excessive and unreasonable. The Applicant-Husband has other sources of income and the same have not been disclosed by him.

6. Before considering the rival submissions, certain admitted factual aspects are required to be set out. The Applicant-Husband and Respondent No.1-Wife were married on 29th April 2017 and they have a 5 years old child with special needs out of the said wedlock. The child is suffering from a medical condition of Spinal Cord Misalignment and requires physiotherapy. It is an admitted position that the child also requires Autism Risk Therapy. In the

Application which has been filed under the provisions of the DV Act, the Respondent No.1-Wife has fairly and candidly stated that she was earning a salary of Rs.17,00,000/- per year and that she was employed with *Wipro*. The said child was born on 22nd January 2018 and is admittedly a child with special needs requiring special attention and care and therefore the Respondent No.1-Wife resigned from her job and was relieved on 25th July 2019. It is significant to note that the Applicant-Husband has not denied this fact in his Appeal memo filed in the Appeal preferred before the Sessions Court.

7. In the above background, it is necessary to consider various submissions advanced by learned Counsel appearing for the Applicant-Husband. The first contention is that the Respondent No.1-Wife has not filed the 'Affidavit of Disclosure' as per the mandatory directions of the Supreme Court in *Rajnish* (supra). It is significant to note that in this particular case, the Respondent No.1-Wife has disclosed all the facts in her D.V. Proceedings itself. She has disclosed that she was earlier earning and then later resigned from her job to care for her child with special needs who requires special attention and almost all the information and details which are required to be provided and disclosed as directed by the Supreme Court in *Rajnish* (supra) are given by

Respondent No.1-Wife. It is further significant to note that in the Appeal which has been preferred by Respondent No.1-Wife, she has filed the Affidavit of Disclosure as per the directions in *Rajnesh* (supra) and has disclosed everything. She has stated that she is temporarily residing at her sister's matrimonial house. She has given the details of various expenses required and also disclosed that her child with special needs, is suffering from certain medical conditions. All her requisite and essential expenses are provided in a detailed manner. The fact that she is earning some interest on the Fixed Deposit is also disclosed by her. It is also disclosed that she has booked a flat in Noida by taking a loan and that the builder has not yet handed over possession of the said flat. It is significant to note that as far as the Applicant-Husband is concerned, she has stated that he has completed an M.Tech. from I.I.T. Mumbai and that he is working as a Superintendent Geologist with O.N.G.C. and that his gross annual salary is Rs.26,00,000/- (Rupees Twenty-Six Lakh only). He has been provided with a 2 B.H.K. flat by O.N.G.C at Vidyavihar, Ghatkopar and that he also owns a flat in Pune and that he also earns an income from his ancestral properties situated in Jaunpur and that he is receiving a rental income from the same. It is significant to note that the Appeal has been preferred by the present Applicant-Husband on 5th April 2021.

The said Affidavit of Disclosure has been filed before the Appellate Court on 26th June 2021 and the impugned Order of the learned Appellate Court has been passed on 11th February 2022. It is significant to note that the present Applicant-Husband has neither filed any Affidavit denying the contentions raised by Respondent No.1-Wife nor has he filed his own Affidavit of Disclosure. The directions of the Supreme Court in *Rajnesh* (supra) are applicable to both - the Husband and the Wife. This is a case where Respondent No.1-Wife has complied with the same and the Applicant-Husband has failed to comply with the same. Thus, there is no substance in the first contention raised by the Applicant-Husband.

8. As far as the second contention regarding violation of principles of natural justice is concerned, the said D.V. proceedings has been filed in February 2021. The learned Metropolitan Magistrate issued Notice on 10th February 2021 and the next date was fixed on 22nd February 2021. The Protection Officer / the District Women and Child Development Officer went to the residence of the Applicant for service of the said Notice. However, the report dated 22nd February 2021 of the Protection Officer records that on the instructions of the Applicant-Husband, the Applicant's mother refused to accept the

service of the said Notice. Thus, it is clear that the Applicant-Husband was having complete knowledge of the said proceedings filed by the Respondent No.1-Wife.

9. It is further significant to note that the learned Advocate appearing for Respondent No.1-Wife sent a letter dated 24th February 2021 to the Applicant-Husband *inter alia* mentioning that the matter is placed for hearing before the learned Metropolitan Magistrate on 4th March 2021. In the said letter it is specifically mentioned that when the Protection Officer attempted to serve the said Notice on the Applicant-Husband, the same has been refused and the Applicant-Husband has remained absent on 22nd February 2021. It is further significant to note that the said letter dated 24th February 2021 has been delivered to the present Applicant-Husband.

10. It is further significant to note that on 4th March 2021, an Application has been filed on behalf of Respondent No.1-Wife praying that the Application be proceeded with in absence of the Husband. The Metropolitan Magistrate by Order dated 4th March 2021, directed that the matter be proceeded *ex parte* against the present Applicant-Husband. It is specifically mentioned in the said Order that when the Protection officer went to serve the

Notice on the Husband, the same has been refused to be accepted.

11. It is further significant to note that, on 22nd March 2021 when the Application seeking monetary relief was heard by the learned Metropolitan Magistrate, the present Applicant-Husband was present in the Court along with his Advocate and the impugned Order dated 22nd March 2021 has been passed after hearing the Advocate of the Applicant-Husband.

12. It is further significant to note that the learned Metropolitan Magistrate has specifically recorded in the said Order that in the presence of the learned Advocate appearing for the Applicant, he has enquired with the Applicant-Husband about his income and the Applicant-Husband has informed the learned Metropolitan Magistrate that his income is Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) per month. Accordingly, the learned Metropolitan Magistrate has passed the Order granting maintenance of 30,000/- per month to the Respondent No.1-Wife and Rs.20,000/- per month to the child. Therefore, it is clear that the contention that there is violation of principles of natural justice is devoid any basis.

13. This is a case where the Applicant-Husband who is a highly

qualified person and is working as a Superintendent Geologist with O.N.G.C. has made every attempt to avoid accepting the service of the Notice of hearing. The present Criminal Application is preferred under Section 482 of the CrPC. Section 482 of the CrPC provides that the High Court has got inherent powers to make such orders as may be necessary to give effect to any order under CrPC, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. By no stretch of imagination can it be said that the Applicant-Husband who is a highly qualified person holding a high position, when he makes every attempt to avoid service of the Notice, has suffered an abuse of the process or that any order is required to be passed in his favour to secure the ends of justice. In fact, the conduct of the Applicant-Husband himself shows that it is an abuse of the process of law and that not only does this Criminal Application deserve to be dismissed but that it is required to be dismissed with exemplary costs in order to secure the ends of justice.

14. The Respondent No.1-Wife who is highly qualified, has completed her M.B.A., was working in *Wipro* and was earning a salary of Rs.17,00,000/- per year, has left the job to care for her child with special needs. Admittedly, the child is suffering from Spinal Cord Misalignment and requires Physiotherapy. It is an

admitted position that the child requires Autism Risk Therapy. Unfortunately, the mother who has left a lucrative job to care for her child with special needs, is being harassed and therefore was required to file D.V. proceedings. The Applicant-Husband refused to accept the service of Notice of D.V. proceedings, has not disclosed any information about his income including rental income and challenged the Order before the Appellate Court and thereafter, in this Court. It is significant to note that the Applicant-Husband has not denied that the Respondent No.1-Wife has resigned from her job to care for their child with special needs. It is further significant to note that the Affidavit of Disclosure has been duly filed by the Respondent No.1-Wife. The contents of the same have not been denied by the present Applicant-Husband by filing any reply to the said Affidavit. The Applicant-Husband has not filed his own 'Affidavit of Disclosure'.

15. It is further significant to note that the Applicant-Husband has not disclosed his income that he is having from rent of flat in Pune as well as from the ancestral properties situated in Jaunpur. Therefore, it is clear that the Applicant-Husband has approached this Court with unclean hands.

16. The contention raised by Mr. Dubey, learned Counsel

appearing for the Applicant-Husband is that although the gross salary of the Applicant is Rs.1,53,119/- per month but the total deductions including income tax are to the tune of Rs.74,320/- per month and that the net pay is only Rs.78,799/- per month and therefore an excessive and unreasonable interim maintenance has been granted by the learned Metropolitan Magistrate. With respect to this contention, I have already held that the Applicant-Husband has approached this Court with unclean hand. The Applicant-Husband has never denied that he is receiving rental income from his flat in Pune as well as income from the ancestral properties situated in Jaunpur. Therefore, there is no substance in the said contention.

17. It is further significant to note that the Applicant-Husband has admitted before the learned Metropolitan Magistrate that his income is about Rs.1,50,000/- per month. Therefore, there is no illegality or perversity in the impugned Order. Accordingly, the Criminal Application is dismissed. However, in this case apart from the dismissal of the Criminal Application, the Applicant-Husband is required to pay a cost of Rs.25,000/- (Rupees Twenty Thousand only) to the Respondent No.1-Wife as the Respondent No.1-Wife who is the mother of their child, resigned from her job at *Wipro* when she was earning a salary of Rs.17,00,000/- per

year only so that she could care for her child with special needs and was further constrained to file D.V. proceedings and was required to defend in the proceedings in various Courts.

18. It is further significant to note that the Applicant-Husband was not complying with the Order granting interim maintenance and that orders were required to be passed by this Court for compliance of the interim maintenance Order and accordingly, thereafter a partial payment has been made. It is an admitted position that till date, a huge amount towards maintenance remains unpaid.

19. Accordingly, the Criminal Application is dismissed with cost of Rs. 25,000/-.

[MADHAV J. JAMDAR, J.]