

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 157 OF 2021

Zinoria Fabius Rebello
@ Zinoria Natasha Sequeria ...Applicant
Aged : 36 Years, Occ. Service,
Residing at 403, Shirley CHS., Maryland
Complex, I.C. Colony, Borivali,
Mumbai 400 103.

Versus

1. Fabius Anthony Rebello
Aged : 37 Years, Occ : Service,
Residing at 7, Sangita St. Pius, "C" CHS,
Trimurti Marg, Mulund, Mumbai, 400 080.

2. The State of Maharashtra ...Respondents

**WITH
CRIMINAL REVISION APPLICATION NO. 136 OF 2021**

Fabius Anthony Rebello ...Applicant

Versus

1. Zinoria Fabius Rebello
2. The State of Maharashtra ...Respondents

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Mr. Anthony Marques, Advocate for the Applicant in Criminal Revision Application No.157 of 2021 and Advocate for Respondent No.1 in Criminal Revision Application No.136 of 2021.

Mr. Shreeram Shirsat a/w Mr. Amandeep Singh Sra a/w Mr. Madhur Salkar a/w Mr. Shekhar Mane a/w Ms. Nishi Singhvi a/w Mr. Anna Oommen, Advocate for the Applicant in Criminal Revision Application No.136 of 2021 and Advocate for Respondent No.1 in Criminal Revision Application No.157 of 2021.

Mr.M.G. Patil, APP for the Respondent No.1– State in both Applications.

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CORAM : PRAKASH D. NAIK, J.

DATE OF RESERVING ORDER : 29th SEPTEMBER, 2022

DATE OF FURTHER HEARING : 14th JUNE, 2023

DATE OF PRONOUNCING ORDER : 17th JULY, 2023

PER COURT :

1. The applicant in Criminal Revision Application No.157 of 2021 challenges the order dated 10.03.2021 passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi, Goregaon, Mumbai, in Criminal Appeal No.106 of 2020 modifying the order dated 06.03.2020 passed by the learned Metropolitan Magistrate, 68th Court, Borivali, Mumbai in C.C. No.324/DV/2016 reducing the maintenance amount of Rs.50,000/- to Rs.30,000/- per month to the revision applicant.

2. The applicant in Criminal Revision Application No.136 of 2021 challenges the order dated 06.03.2020 passed by the learned Metropolitan Magistrate 68th Court, Borivali, Mumbai in C.C. No.324/DV/2016 and Order dated 10.03.2021 passed by the Sessions Court in Criminal Appeal No.106 of 2020 modifying the order of the trial Court and reducing the maintenance of Rs.30,000/- and seeking declaration that the Respondent No.1 in the said application is not entitled to any maintenance.

3. The revision applicant in Criminal Revision Application No.157 of 2021 is the wife of the revision applicant in Criminal

Revision Application No.136 of 2021 (for the sake of brevity, both the parties are referred to as 'husband and wife').

4. The marriage between both the parties was solemnized on 09.02.2013. The wife preferred application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'D.V. Act') before the Court of learned Metropolitan Magistrate 68th Court, Borivali, Mumbai on 14.10.2016. She filed affidavit under Section 23(2) of the D.V. Act.

5. The husband filed reply to the application under D.V. Act and to the affidavit under Section 23(2) of the D.V. Act. The wife filed rejoinder, the husband filed sur-rejoinder and wife also filed sur-sur-rejoinder.

6. The learned Magistrate vide order dated 06.03.2020 partly allowed the application of wife and the husband was directed to pay Rs.50,000/- per month to the wife towards the interim maintenance from the date of filing of application i.e. 14.10.2016 till the decision of the case pending before the trial Court vide Section 20 r/w Section 23 of the D.V. Act.

7. The husband challenged the order dated 06.03.2020 by preferring Criminal Appeal No.177 of 2020 before the Court of Sessions. The wife filed affidavit-in-reply to the Appeal opposing the relief sought in the appeal.

8. The learned Sessions Judge vide order dated 10.03.2021 partly allowed the appeal. The order dated 06.03.2020 passed by the learned Magistrate granting interim maintenance was partly quashed and set aside to the extent of quantum and it was modified by directing husband to pay Rs.30,000/- per month to wife towards interim monetary relief from the date of filing of the application dated 14.10.2016 till the final adjudication of the case under Section 23 of the D.V. Act.

9. Both the parties are aggrieved by order dated 10.03.2021 passed by the learned Sessions Judge, Borivali Division, Dindoshi, Goregaon, Mumbai. According to husband, wife is not entitled for any maintenance and the contention of the wife is that the learned Sessions Judge ought not to have disturbed the order passed by the learned Magistrate and the same may be directed to be restored.

10. The husband is impleaded as Respondent No.1 in Criminal Revision Application No.157 of 2021, whereas the wife is impleaded as Respondent No.1 in Criminal Revision Application No.136 of 2021.

11. Learned Advocate for the revision applicant in Criminal Revision Application No.157 of 2021 and for Respondent No.1 in Criminal Revision Application No.136 of 2021 submitted that the order dated 10.03.2021 reducing the maintenance of Rs.30,000/- is

contrary to the evidence on record. The learned Sessions Judge ought not to have interfered with quantum of maintenance ordered by the trial Court. The learned Judge has gravely erred in partly allowing the criminal Appeal preferred by husband. The amount of Rs.50,000/- per month being interim maintenance granted to the wife by the learned Magistrate was based on the premise that the salary of husband is Rs.3,78,000/- per month, hence, the interim maintenance was paltry considering the income of husband, the pleadings and documents on record. In fact the case for enhancement of the interim maintenance granted by the trial Court was made out. Reduction of maintenance would cause grave financial loss to the wife. The wife is required to incur medical expenses of her parents. The Appellate Court has considered the expenses of wife for the years 2015 and 2016. The Court failed to consider that there is huge gap between the income of husband and wife, which denies the opportunity to the wife to live life of the same standard. The husband is the captain on the ship drawing handsome salary. The salary of wife is not sufficient as her expenses exceeds her income. The husband did not produce his Income Tax Returns, Balance-Sheet, Wealth Tax Returns, Salary Certificates and Statements of his investments etc. In the year 2014, his salary for the month of May was Rs.11,64,950/-. He has

large amount as Fixed Deposits and other savings. The trial Court has taken into consideration the factual aspects while granting the maintenance of Rs.50,000/- per month. The reasoning assigned by the Sessions Court is erroneous.

12. Learned Advocate for Respondent No.1 in Criminal Revision Application No.157 of 2021 and Applicant in Criminal Revision Application No.136 of 2021 submitted that the order dated 06.03.2020 passed by the learned Magistrate as well as the order dated 10.03.2021 reducing the maintenance are required to be interfered since the wife is not entitled for any maintenance. The record indicate that the wife has sufficient income to maintain herself. False and misleading statements were made by her. The parents of wife are capable of maintaining themselves. The wife deserves no maintenance. She had left the matrimonial home by her own free will and she is gainfully employed. She had not challenged the order dated 06.03.2020. The wife holds the senior position at her place of work and draws handsome salary which is more than sufficient for her to take care of all her needs as well as that of her parents. Her parents are self employed individuals doing business of Real Estate Agency. They have a flat at Bandra that generates substantial rental income. They are well equipped to manage their own expenses, medical or otherwise even without

the support revision applicant/wife. The wife has invested money in mutual funds and earning substantially through dividends. Her bank statements revealed the withdrawals for investments. The wife owns the 2BHK flat at IC Colony, Borivali (West), Mumbai. The Court failed to take into consideration that the income of wife is to the tune of Rs.22,67,200/- per annum which comes to around Rs.1,88,934/- per month which is corroborated by the assessment statement for the year 2017-18. The trial Court has erroneously accepted the claim of wife that she is earning Rs.1,18,000/- per month. The learned Sessions Judge has also miscalculated the income while granting maintenance to the wife of Rs.30,000/- per month. The order passed by the Courts below are contrary to law. Learned Advocate placed reliance on the income documents of wife. Learned Advocate for the husband is relied upon the income documents of husband. It is submitted that inability to maintain herself is principle condition for grant of maintenance to the wife. The wife must positively aver and prove that she is unable to maintain herself in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. The impugned order were passed by both the Courts without considering the fact that, Affidavit of disclosures of assets and liabilities were not filed on record. The calculations arrived at

by Courts below were without any basis. Even at the appellate stage Court could consider such affidavit to determine the liability and quantum of maintenance.

13. Learned Advocate Mr. Shirsat has relied on following decisions :

- i. *Rajnish Vs. Neha and Another*¹.
- ii. Order dated 18.07.2017 passed by the Division Bench of this Court in Family Court Appeal (ST). No.17073 of 2017 in the case of *Mrs. Gurpreet Kaur Alagh Vs. Mr. Gurpreet Singh Alagh*.
- iii. *Shama Rahul Moholkar Vs. Rahul Deorao Moholkar*².
- iv. *Manish Kumar Vs. Mrs. Prathibha*³.
- v. *Mamta Jaiswal Vs. Rajesh Jaiswal*⁴.
- vi. *Smt. Bhagyashree W/o Ravindranath Bhovi and Anr. Vs. Dr. Ravindranath S/o Ameenappa Bhovi* decided by Karnataka High Court on 28.02.2018 in R.P.F.C. No.200044/2016.
- vii. *Kusum Bhatia Vs. Sagar Seth*, Order passed by Hon'ble Supreme Court in Spl. Leave to Appeal (C.) No. 16051 of 2017 dated 16.09.2019.
- viii. *Sunita Kachwaha and Ors. Vs. Anil Kachwaha*⁵.

1 (2021) 2 SCC 324

2 2018(2) Mh.L.J. 490

3 (2009) 11 Delhi 246

4 2000 SCC OnLine MP 580

5 (2014) 16 SCC 715

14. Learned Advocate for the applicant-wife has relied upon the Income Tax Returns and the other documents and asserted the yearly salary comparison of the parties. It is submitted that, in the assessment year 2017-18 gross annual income of wife is Rs.10,74,130/- and Net Annual Income (Taxable) is Rs.7,72,133/-. The Net Annual Income of husband (non taxable) is Rs.92,42,552.32/- For the year 2018-19 the gross annual income of wife is Rs.22,66,700/- and Net Annual Income (Taxable) is Rs.16,54,040/-. Whereas the Net Annual Income (Non Taxable) of the husband is Rs.99,80,877/-. In the Assessment year 2019-20, the Gross Annual Income is Rs.13,97,970/- and Net Annual Income (Taxable) Rs.10,72,551/-. Whereas the Annual Income of husband (Non Taxable) is Rs.1,07,79,347/-. The husband had earned minimum monthly salary of Rs. 7,70,129.36/- per month for the year 2016-17. The husband earned ten times more than his wife.

15. It is pertinent note that the main proceedings initiated by the wife under Section 12 of the D.V. Act are pending before the Court. The learned Magistrate had considered the prayer for interim maintenance. Vide order dated 06.03.2020, the husband was directed to pay maintenance of Rs.50,000/- per month to the wife towards interim maintenance from the date of filing the application i.e. 14.10.2016 till the decision of the case. The wife did not

challenge the order dated 06.03.2020 before the Sessions Court. However, the husband had preferred an appeal which was partly allowed vide order dated 10.03.2021. While passing the order dated 06.03.2020, the learned Magistrate had analysed the factual aspects including objection raised by the Respondent-husband. According to the husband, his wife is not entitled for any maintenance at all. It is further urged that both the orders be set aside.

16. The learned Magistrate while passing the order dated 06.03.2020 has observed that, while going through the application it becomes clear that since 28.08.2014, the husband is not residing with her. Prima facie it becomes clear that the husband had caused domestic violence upon the applicant-wife. Both are residing separately. In such circumstances, it is necessary for Respondent No.1 to provide some amount to the applicant wife for her maintenance. In such circumstances it is necessary for husband to provide maintenance to the wife. The applicant-wife in her application has stated that, she is earning Rs.1,18,000/- per month. As against this, the husband filed reply and it appears that on the date of filing said affidavit i.e. on 17.07.2018, he was earning Rs.3,78,000/-. Thus, there is a huge gap of income between the applicant and Respondent No.1. On going through the pleadings of

both the parties it becomes clear that they are accustomed to high standard of living. The applicant being the wife of respondent is having right to enjoy life at par with Respondent No.1. Hence, husband should pay her maintenance. The trial Court took into consideration the salaries of both the parties and the amount required to the applicant/wife for food, clothes, medicines, cosmetics etc. and for other things to enjoy life at par with husband. Thus, the Court directed the respondent- husband to pay Rs.50,000/- per month to the wife from 14.10.2016 till the decision of the case.

17. The husband had also initiated the proceedings under Section 340 of Cr.P.C. against the wife alleging that, she had made false statement about her income and there was suppression that she was the owner of the flat. The application was rejected by trial Court and Sessions Court. The orders are confirmed by this Court.

18. The learned Sessions Judge considered the submissions of both the sides and the documents on record and the fact that the husband was mostly on the ship and his salary is on the higher side as compared to wife. The wife is earning, however, the purpose of the D.V. Act is to protect the women from the acts of domestic violence. Section 12(5) of the D.V. Act provides that, application under Section 12 of the D.V. Act should be decided expeditiously

and monetary relief, if required, to be granted would be usually from the date of application. It was further observed that the wife claimed that she was earning Rs.14,16,000/- per annum corresponding to Rs.1,18,000/- per month while husband was taking salary of Rs.5,50,000/- per month. The claim of husband is that the wife was earning Rs.22,67,200/- per annum corresponding to Rs.1,88,000/- per month. He relied upon certain documents. The wife denied the statement. It was not challenged by the husband with additional material therefore it is just and proper to observe at this stage that the income of wife was of Rs.1,18,000/- per month. The income of husband after deduction of tax would be Rs.3,90,225/-. If Income is compared, it would be seen that income of the husband is double than the income of wife per month. The learned Sessions Judge has also referred to the decision of the *Sunita Kachwaha and Ors. Vs. Anil Kuchwaha*⁶ and observed that, even if the wife is earning it is proper to hold that she is entitled for maintenance. However, as far as the quantum of maintenance is concerned the learned Sessions Judge has referred to the expenses of the wife reflected in her application and reduced the amount of Rs.50,000/- to Rs.30,000/- per month.

19. Thus, the learned Sessions Judge was pleased to hold that the wife was entitled for maintenance but reduced the quantum

6 AIR 2015 SC 554

ordered by the learned Magistrate. It is relevant to note that the trial Court had granted interim maintenance. The main proceedings are still pending before the trial Court. Having opined that the wife was entitled for maintenance, no case is made out for reducing the quantum of Rs.50,000/- to Rs.30,000/-. There was no reason to interfere in the quantum of maintenance directed to be given to the wife vide order dated 06.03.2020. The findings of the Courts below that the wife is entitled for maintenance while she is earning has been challenged by the husband before this Court. The learned Magistrate has considered the fact that the wife has stated that she is earning Rs.1,18,000/- per month. The husband filed reply to Affidavit of wife vide Exhibit-20 and stated that on the date of filing of said Affidavit he was earning Rs.3,78,000/-. Both sides are accustomed to high standard of living. Wife has right to enjoy life on par with husband. I do not find any reason to deviate from the view taken by the learned Magistrate. Although the learned Sessions Judge has confirmed the findings of the trial Court it has differed to the quantum of maintenance. The trial Court considered the fact that the income of wife is not sufficient to maintain her. The trial Court has taken into account the fact that the quantum of maintenance would depend upon the status of the parties the capacity of spouse to pay

the maintenance and whether the aggrieved person has any independent income sufficient to maintain themselves. The Court accepted the figure of Rs.3,78,000/- given by the husband as his salary per month and granted the amount of Rs.50,000/- per month as interim maintenance to wife. The wife has contended in her reply that inspite of repeated demands, the husband has not filed portage bills and other documents showing his income, including his business income and savings. The husband cannot escape his responsibility of giving proper maintenance to wife. However at this stage, the maintenance granted by the trial Court cannot be further enhanced to more than Rs.50,000/-.

20. In the case of *Rajnesh Vs. Neha and Anr.* (Supra), the apex Court framed guidelines for uniform format of Affidavit of Assets and Liabilities to be filed in maintenance proceedings. The grievance of husband is such guidelines are required to be followed. There was no such Affidavit considered by Court and it needs to be considered even at this stage. The said decision was delivered on 04.11.2020. The application under Section 12 of the DV Act and Affidavit under Section 23(2) of the Act were filed on 14.10.2016. The impugned order of maintenance was passed on 06.03.2020. It is now urged that such affidavit ought to have been considered. The Courts have decided grant of interim maintenance.

The impugned orders would not be vitiated for not filing such affidavit more particularly in the facts of this case. The other decisions relied upon by learned Advocate for husband can be distinguished in facts of this case.

21. Considering all the aspects as above, I pass the following order :

ORDER

i) Criminal Revision Application No.157 of 2021 is allowed to the extent that the order dated 10.03.2021 passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi, Goregaon, Mumbai, in Criminal Appeal No.106 of 2020 modifying the order dated 06.03.2020 passed by the learned Metropolitan Magistrate 68th Court, Borivali, Mumbai in C.C. No.324/DV/2016 reducing the maintenance amount to Rs.30,000/- per month to Mrs. Zinoria Fabius Rebello is set aside and the order dated 06.03.2020 passed by the learned Metropolitan Magistrate 68th Court, Borivali, Mumbai in C.C. No.324/DV/2016 is directing the husband to pay Rs.50,000/- per month to wife towards interim maintenance from the date of application i.e. 14.10.2016 till the decision of the case is restored.

ii) The husband Fabius Anthony Rebello is directed to comply the order and clear the arrears of maintenance, if any in accordance with order dated 06.03.2020 passed by the learned Metropolitan Magistrate 68th Court, Borivali, Mumbai in C.C. No.324/DV/2016.

iii) Criminal Revision Application No.136 of 2021 is dismissed.

iv) Criminal Revision Application No.157 of 2021 is disposed off.

v) The trial Court shall decide the main proceedings and issues involved therein on merits and in accordance with law expeditiously within six months from the date of receipt of this order.

(PRAKASH D. NAIK, J.)