

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

CRIMINAL REVISION APPLICATION NO.336 OF 2022

Shailesh Shashikant Kulkarni

.... Applicant

versus

Geeta Shailesh Kulkarni & Ors.

.... Respondents

.....

- Mr. Kalpesh U. Patil, Advocate for Applicant.
- Mr. Kishor Ajetao i/b. Vanraj Shinde, Advocate for Respondent Nos.1 and 2.
- Mr. A. R. Patil, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 05th JUNE, 2023

P.C. :

1. The Petitioner is the Original Respondent in Criminal Misc. Application No.1079/2018 pending before Judicial Magistrate First Class, Pune. The said application was filed by the Respondent Nos.1 and 2 herein u/s 12(1) r/w 18 (a, b & e), 19 (a to f), 19(a), 20, 22 and 23(2) of the Protection of Women from Domestic Violence Act, 2005. In the said application, the Respondents herein filed Ex.5 for interim order u/s 23 of the said Act.

2. For the sake of convenience the Petitioner is referred to as the husband, the Respondent No.1 is referred to as the wife and the Respondent No.2 is referred to as the daughter.
3. The learned Magistrate vide order dated 01/02/2022 passed the impugned order below Ex.5 by allowing the interim application partly. By the said order, the Petitioner/husband was prohibited from taking any steps affecting the wife's and the daughter's residence in the joint flat. The husband was directed to pay Rs.12,000/- each to the wife and the daughter. The husband was directed to pay the maintenance charges of the flat, the monthly installments of the bank and the daughter's expenses for education. The husband challenged the said order by way of Criminal Appeal No.101/2022 before the Additional Sessions Judge, Pune. The Said Appeal was dismissed by the Additional Sessions Judge, Pune, vide order dated 24/06/2022. The husband/Applicant has challenged both these orders before this Court in the present Revision Application.

4. Heard Mr. Kalpesh U. Patil, learned counsel for the Applicant, Mr. Kishor Ajetroa, learned counsel for Respondent No.1 & 2 and Mr. A. R. Patil, learned APP for the State.
5. Learned counsel for the Applicant submitted that the impugned order was passed on 01/02/2022. The arguments were not heard and the impugned order was passed when the Standard Operating Procedure (SOP) dated 29/01/2022 issued by this Court was in force. Clause (5) of the said SOP mentioned that the Judicial Officers may not pass any adverse order owing to the absence of the advocates, parties, witnesses or accused persons. He further submitted that the wife has Rs.30,00,000/- in her fixed deposit maintained with her bank and therefore she is not in need of any financial help. He submitted that he is willing to take custody of their daughter, who is a special child. He further submitted that he is getting salary of Rs.89,000/- per month. Out of it, he has to pay EMI of Rs.35,000/-. He further submitted that since the arrears had mounted, he had to obtain further loan on the said flat and now he has to pay EMI of

Rs.51,000/- per month. Therefore, it has become practically impossible for him to make the payment as directed by the learned Magistrate.

6. On the other hand, learned counsel for the wife and the daughter supported both the impugned orders. He submitted that the complaint was filed in October 2018 and the husband delayed the matter and therefore even interim order could not be passed earlier. He further invited my attention to the Roznama wherein it is mentioned on 18/01/2022 that the case was adjourned 'for orders' on Ex.5.

7. At the outset, I asked learned counsel for the husband as to whether the matter can be decided finally by making it time bound, instead of fighting on the interim relief. The husband was not agreeable to that suggestion and insisted on setting aside both the impugned orders. Therefore, I heard both the parties on merits of the matter.

8. The wife has filed the application under the said Act. She has stated that they got married on 21/12/2009 and the daughter was born on 14/06/2011. The wife was educated and had completed the course of M.E. But the husband never allowed her to work and therefore she was not in a position to earn her livelihood. The daughter is suffering mentally and physically. But the husband was not providing any medical expenses. The husband was working as a Zonal Manager in a Pharmaceutical company and was earning Rs.1,30,000/- per month. It is mentioned in the application that the daughter is suffering from slow growth mentally and is a special child. In spite of that, the husband's behaviour was extremely cruel towards the wife and the daughter. There was an instance when the husband had assaulted the wife causing injury to her ear. The husband had left the company of the wife and daughter from 22/04/2018. The wife had to pay maintenance amount of the flat to the tune of Rs.3,000/- per month. She had mentioned various instances and allegations amounting to the domestic violence as defined u/s 3 of the said Act.

9. Along with the said application under Ex.5, the wife had filed application for interim relief as mentioned earlier. Both the Courts have passed the impugned orders. Learned Magistrate recorded that the husband had filed his say to the wife's application. He denied the allegations made against him. According to him, his wife was at fault. He was always busy in his work because of the nature of his job. The wife was not willing to accommodate. It was his case that the wife was not willing to marry him, but she was forced to marry. He made some allegations against the wife. According to him, he was earning Rs.89,000/- per month. He had purchased the flat of Rs.40,00,000/- and was paying EMI of Rs.35,000/- and also paying maintenance of Rs.3,000/- per month. He was residing separately at Kothrud and he was spending rent of Rs.15,000/-. He was spending Rs.10,000/- on his food and therefore he was not in a position to pay any maintenance to the wife and the daughter. According to him, the wife was working in a Tours and Travels company and was earning Rs.20,000/- to 30,000/- per month.

10. After considering the statements of both the parties, in their respective applications and the 'say', learned Magistrate observed that the husband had accepted that he was residing separately from April 2018. The amount given by him of Rs.1,25,000/- was quite insufficient. The allegations made against the wife were not believable. Learned Magistrate further observed that there was possibility that the husband would force the wife and the daughter to leave that flat. The daughter required money for her education and her treatment. The husband was getting Rs.89,000/- deducting his income tax and other taxes. Considering everything, the interim order was passed which was upheld by the Sessions Court.

11. Learned Additional Sessions Judge referred to the SOP issued by this Court during the pandemic, and, observed that it was a case of interim relief only. Under the said Act, the Court was empowered to award interim maintenance even 'exparte'. Learned Additional Sessions Judge observed that the

maintenance awarded by the Trial Court was just, proper and reasonable and hence refused to interfere with the impugned order.

12. I have considered the reasons given by both the Courts and I have also considered the submissions made by both the parties. As submitted by the learned counsel for the wife, the application was filed by her in the year 2018 and the interim order was passed ultimately on 01/02/2022. The Roznama shows that on 18/01/2022 the affidavits of both the sides were on record and the matter was adjourned for orders. When the matter was adjourned for passing the orders, on that day, the SOP was not in operation, but it came into effect from 29/01/2022. The order was not passed because the advocates for the parties were absent, but the order was passed pursuant to the noting in the Roznama dated 18/01/2022. Learned Magistrate took into account all the factors and averments made by the husband in his say. Learned Additional Sessions Judge rightly observed that u/s 23(2) the Magistrate was empowered

to pass order on the basis of affidavit filed by the aggrieved person. Considering the scheme of the said act, the idea is to safeguard the interest of the aggrieved person, so that the said person does not suffer till the application is decided finally. The Act provides for immediate protective orders in favour of an 'aggrieved person'. I do not see any impropriety in the learned Magistrate passing the impugned order. Moreover, the husband had got enough opportunity to put forth his case before the Sessions Court. Even today I have heard learned counsel for the husband in detail. The main controversy is still pending before the learned Magistrate for adjudication. It is only a question of interim relief to safeguard the interest of the wife and the daughter. As mentioned earlier, the daughter is a special child and is in need of medical expenses and educational expenses. Both of them deserved special immediate protection in view of the spread of Covid-19. The wife and the daughter are residing in that particular flat. Therefore, till decision of the main application, it would not be proper to pass any order which would jeopardise their stay in that flat. The amount of

Rs.12,000/- per month each to the wife and the daughter cannot be said to be excessive. That amount is also reasonable. Therefore, I do not see any reason whatsoever to interfere with the impugned orders. It is necessary to protect the wife as the daughter is who is a special child. Without the protective orders, it would be very difficult for them to survive. As rightly observed by the learned Sessions Judge, the order passed by the Magistrate was only an interim order and it is expected that both the parties co-operate in expeditious disposal of the main application filed under the said Act. Therefore, at this stage I am not inclined to interfere with the interim order. Consequently, the application is rejected.

(SARANG V. KOTWAL, J.)