



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.264 OF 2022
WITH
CRIMINAL REVISION APPLICATION NO.319 OF 2022

Chandragupt R. Chauhan .. Applicant
Versus
Rita Chandragupt Chauhan and ors .. Respondents

WITH
CRIMINAL REVISION APPLICATION NO.409 OF 2022
WITH
CRIMINAL INTERIM APPLICATION NO.2980 OF 2022
IN
CRIMINAL REVISION APPLICATION NO.409 OF 2022

Rita Chandragupt R Chauhan .. Applicant
Versus
The State of Maharashtra and ors .. Respondents

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Mr. Rutvij Solanki a/w Ms. Megha Keluskar for the Applicant in
Revn. Nos. 264/2022 and 319/2022 and the Respondents in
Revn. No.409/2022.

Mr. Ameya Lambhate i/b. Mr. A.T. Mhaske for the Applicant in
Revn. No.409/2022 and for the Respondents in Revn. Nos.
264/2022 and 319/2022.

Mr. Y. N. Nakhwa, APP for the Respondent – State.

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CORAM: BHARATI DANGRE, J.
DATED : 03rd OCTOBER, 2023

P.C:-

1. Three Criminal Revision Applications are clubbed together as they arose out of the order dated 8 March 2022 passed by the Additional Sessions Judge, Greater Mumbai, in Criminal Appeal No.3 of 2021 and Criminal Appeal No.5 of 2021 which questioned the order passed by the Metropolitan Magistrate, 31st Court, Vikroli, in case No.7/DV/2020 on an Application filed by the wife seeking interim maintenance.

The Additional Chief Metropolitan Magistrate passed an order of interim maintenance directing the husband to pay a sum of Rs.20,000/- per month to the wife. Aggrieved by the said order directing payment of interim maintenance, two different and distinct Appeals were filed before the Sessions Court, which resulted in enhancement of the interim maintenance from Rs.20,000/- to Rs.35,000/- per month by allowing the Appeal filed by the wife.

2. Heard learned counsel for the applicant-husband and learned counsel for the respondent – wife, who supported the impugned order.

3. Perusal of order dated 8 March 2022 would reveal that the Appellate Court had done a guess work and I say so it to be a guess work, as the order is bereft of any reasoning namely giving details of earnings and other requirements of wife. The learned Judge has only referred to the affidavits, but I do not find any

mention of figures in the impugned order.

The order of enhancement of maintenance amount highlights the health issue faced by the wife and the same is reasoned to the effect that when the wife is facing health issues, providing reasonable amount of maintenance is a matter of priority and therefore, appeal filed by the husband for setting aside the order of maintenance is dismissed whereas, the maintenance granted by the Magistrate in favour of wife is enhanced to Rs.35,000/- per month.

4. Learned counsel for the revision applicant in Application No.264 of 2022 i.e. the husband, by inviting attention of this Court to the sequence of events would submit that the Domestic Violence Complaint was filed on 7 January 2020 along with interim application seeking maintenance and the interim application came to be decided on 5 December 2020. It is also submitted that the decision of the Apex Court in ***Rajnish vs Neha***¹ which was pronounced on 4th November 2020 is applicable to all pending proceedings. Learned counsel would further submit that during the pendency of the proceedings before the Appellate Court, the husband and wife were directed to file their respective affidavits as per the directions issued by Apex Court in ***Rajnish vs. Neha*** (supra). Pertinently, the said decision in ***Rajnish vs. Neha*** (supra) came to be passed prior to the Magistrate passed the order of interim maintenance in favour

¹ CRIMINAL APPEAL NO. 730 OF 2020 (Arising out of SLP (Crl.) No. 9503 of 2018)

of the wife.

5. The respondent - wife prayed for enhancement of interim maintenance before the Appellate Court. That is how, the Appellate Court perused the said affidavits and was pleased to enhance the amount of maintenance. In the impugned order, the appellate Court did not justify the said enhancement as it only vaguely referred to the affidavits without charting out its details. I take that the first Court i.e. the Court of Magistrate at Mumbai, who ought to have undertaken the exercise, had not done the said exercise and the amount which, it has awarded was not based on the affidavits. As a consequence, the appellate Court, who was deciding the appeal of the husband for setting aside the order of maintenance of Rs.20,000/- dismissed the said appeal and the similar appeal filed by the wife seeking enhancement of interim maintenance was allowed based on the respective affidavit filed by the parties. In any case, acceptance of affidavits is justified from the impugned order passed by the Appellate Court. However, the court of original jurisdiction is the Court of Magistrate at Mumbai to decide the Domestic Violence Application along with the application claiming maintenance, and therefore, it is imperative for the Magistrate to reconsider its order based on the affidavits and for this purpose, the matter is required to be remanded back to the Magistrate for reconsideration of the interim application seeking maintenance.

6. The question now arises is whether the order passed by the

Magistrate on 5 December 2020 as well as order passed by the Additional Judge in Appeals on 8 March 2022 has already taken effect. As per earlier directions issued by this Court, the husband has already deposited Rs.1,40,000/- and the learned counsel for the husband on instructions makes a statement that the balance amount of Rs.1,75,000/- shall be deposited by the husband within a period of two weeks from today. The learned counsel would further submit that if the Court issues time bound direction to the Magistrate to decide the application for interim maintenance, the husband would continue to bear the maintenance of Rs.35,000/- per month and this is however subject to a rider that the amount of Rs.35,000/- per month was not the final determinative figure of maintenance amount payable by him and this maintenance figure would be subject to adjudication, when the Magistrate by taking into account the respective affidavits filed by the parties shall work out the application of the husband to pay maintenance, also entitlement of wife to claim the maintenance as determined in the case of ***Rajnish vs Neha*** (supra).

7. In the wake of the aforesaid statement, and since the learned counsel for the respondent – wife has also consented to the fact that now the Magistrate would have an advantage of having affidavits placed before him before determining the amount of maintenance of Rs.35,000/-, he also conceded to the position and accepted the request of remanding the matter to the

Magistrate subject to the same rider that the final amount shall be determined by the Magistrate, and if he comes to the conclusion about entitlement of wife to be more than the amount enhanced by the Appellate Court then in that case, the deficit amount shall be paid by the husband. If it is not so, then the amount that has been already paid to the wife shall be adjusted towards the amount of maintenance that would be finally determined by the Magistrate.

8. In the wake of the above, I deem it proper to remand Interim Application, below Exh.3, for reconsideration by the Magistrate, who shall also permit the parties to file fresh affidavits with all particulars. As far as medical condition of the wife is concerned, a specific affidavit, meeting the details of treatment undergone by her, including medical expenses incurred by her, shall be filed.

9. The Magistrate shall on consideration of the said affidavits and after affording reasonable opportunity to the parties to put their case, decide and pass the order below Exh.3, within a period of three months from the date of filing of the said affidavits. The said affidavits are to be filed within a period of three months from today.

10. For the reasons recorded above, the order passed by the Additional Chief Metropolitan Magistrate as well as the impugned order passed by the Additional Sessions Judge are

technically set aside.

11. Needless to state that the order directing to pay the amount of maintenance to the wife as per order dated 8 March 2022 shall continue to operate till final order that would be passed by the Magistrate, on remand.

12. The rights and contentions of the parties are kept open to be determined by the Magistrate.

13. All Criminal Revision Applications along with Interim Applications stand disposed off.

(SMT. BHARATI DANGRE, J.)