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

CRIMINAL REVISION APPLICATION NO.423 OF 2022

Sachin Nathuram Choudhary	... Applicant
V/s.	
Rekha Sachin Choudhary and Anr	... Respondents

Mr. Mohammad Shine with Ms. Drishti Singh i/b MZM
Legal for the applicant.

Mr. A.R. Patil, APP for the State.

Mr. Prashant K. Aher with Mr. Vipul Patil for
respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : APRIL 13, 2023

P.C.:

1. The challenge in the application is to the order dated 2nd June, 2022 passed by Additional Sessions Judge, Dindoshi (Boriwali Division), Goregaon, Mumbai in Criminal Appeal No.394 of 2018 arising out of CC No.119/DV/2017. The Magistrate rejected application for interim maintenance. The Sessions Judge set aside the order directing the applicant to pay interim maintenance of Rs.20,000/- per month.

2. According to the petitioner, quantum of maintenance granted by Family Court has not been considered by the Appellate Court. On perusal of the impugned order, I am satisfied that Additional Sessions Judge has not referred to the quantum of maintenance

granted earlier by the the Family Court. Such grant of interim maintenance in proceedings arising out of different statute is relevant consideration while granting order of maintenance under the provisions of Domestic Violence Act, 2005. Therefore, order of appellate court granting interim maintenance to the wife cannot be sustained. I, therefore, pass following order :-

3. The impugned order 2nd June, 2022 passed by Additional Sessions Judge, Dindoshi (Boriwali Division), Goregaon, Mumbai in Criminal Appeal No.394 of 2018 is quashed and set aside.
4. The Criminal Appeal No.394 of 2018 is restored.
5. The amount of 50% arrears deposited before Trial Court by the husband is permitted to be withdrawn by respondent No.1. However, it is made clear that if in future the amount of liability of husband is adjudicated to be below the amount of 50% of arrears, the husband shall be entitled to either refund or appropriation of of maintenance amount to the extent adjudicated by the Courts below.
6. Since the appeal is of year 2018 and considering the fact that maintenance was not granted to the wife, the Sessions Judge shall decide the appeal of wife within a period of three months from the appearance of the parties.
7. Parties shall appear before the Appellate Court on 24th April, 2023.
8. Both the parties are at liberty to submit affidavits of assets and liabilities as contemplated by the Judgment of Apex Court in

the case **Rajnesh V. Neha** reported in (2021) 2 SCC 324 with advance copy to the parties.

(AMIT BORKAR, J.)