

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

CRIMINAL WRIT PETITION NO.3669 OF 2016

Nandlal Kapilmuni PandePetitioner
Versus
Roshani Nandlal Pande
and another Respondents

Mr. Ajit M. Savagave, Advocate for the Petitioner.
Ms. M.R. Tidke, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 06th JULY, 2023

P.C. :

1. The Petitioner has challenged the order dated 16.5.2015 passed by the Judicial Magistrate, First Class, 8th Court, Thane and the order passed by the learned Additional Sessions Judge, Thane on 2.9.2016 in Criminal Appeal No.137/2015. The Petitioner is the original Respondent-husband against whom the Respondent No.1, the wife, has filed a complaint under the provisions of the Protection of Women from Domestic Violence Act.

2. By the impugned order, the learned Magistrate had directed payment of Rs.6,000/- per month to the Respondent No.1-wife and her child towards interim maintenance from the date of application i.e. from 28.7.2014. That order was challenged by the Petitioner before the Additional Sessions Judge. The Appeal was dismissed.

3. Heard Shri Ajit Savagave, learned counsel for the Petitioner and Smt M.R. Tidke, APP for the State.

4. Learned counsel for the Petitioner submitted that the Petitioner made efforts to settle the matter with the Respondent No.1. The Petitioner has lost his job during the COVID Pandemic and, therefore, he is not in a position to pay the maintenance. He submitted that the amount of Rs.6,000/- per month is beyond the Petitioner's capacity.

5. I have considered these submissions. Learned Magistrate has referred to the allegations made by the Respondent No.1. She has mentioned that they got married on 20.5.2013 in Uttar Pradesh. The Petitioner demanded dowry. She was ill-treated mentally and physically on

several occasions. He suspected her character. She was harassed because of non-payment of dowry. The husband and wife went to Ahmedabad in connection with the Petitioner's job. There she fell ill but the Petitioner did not provide any medical treatment to her. She became pregnant and during her pregnancy it was revealed that she had contracted HIV infection. After that, she delivered her child, but, the Petitioner did not pay any medical expenses.

6. According to the Petitioner, he was working in a private company and was earning Rs.8,000/-. Learned Magistrate considered all these aspects. He considered that the Respondent No.1 was residing with her child at her parent's place. She was diagnosed with HIV infection. According to the Petitioner, the Respondent No.1-wife was earning Rs.15,000/- but he could not support his contention with any document. Therefore, after considering the medical condition of the Respondent No.1 and the necessity of the child, learned Magistrate directed the Petitioner to pay Rs.6,000/- per month to the Respondent No.1 and her child towards interim maintenance from the date of application

i.e. from 28.7.2014.

7. Said order of the Magistrate was confirmed by the Additional Sessions Judge in the appeal. Learned Additional Sessions Judge took into consideration the pay-slips and gross-pay of the husband which was shown as Rs.15,600/- and the net salary on an average was Rs.12,600/- per month.

8. Considering this factual position, it is not disputed that the Respondent No.1-wife is HIV positive. She has a child to support and, therefore, in view of her medical treatment, expenses are essential for her treatment and for the up-bringing of her child. For that purpose, Rs.6,000/- per month may not be adequate, but, at least that much amount she is entitled to get till the final decision of the proceedings before the learned Magistrate. Therefore, I do not see any reason to interfere with both the impugned orders. With the result, the Petition is dismissed.

PRADIPKUMAR
PRAKASHRAO
DESHMANE

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PRADIPKUMAR
PRAKASHRAO DESHMANE
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(SARANG V. KOTWAL, J.)