

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

CRIMINAL WRIT PETITION NO.3702 OF 2023

Paankaj Shurewala ... Petitioner

V/s.

State of Maharashtra ... Respondent

WITH

WRIT PETITION NO.3803 OF 2023

Kruti Pankaj Shurewala ... Petitioner

V/s.

Paankaj Ramesh Shurewala and Anr ... Respondents

Mr. Milind S. Gyani for the Petitioner in WP/3702 of 2023 & for Respondent in WP/3803 of 2023.

Ms. Shilpa A. Joshi a/w Ad. S. Kadam for Respondent No.2 in WP/3702 of 2023 & for Petitioner in WP/3803 of 2023.

Mrs. M. R. Tidke-APP for State-Respondent No.1.

CORAM : RAJESH S. PATIL, J.

DATED : 14 DECEMBER 2023

PC.:

1. This Criminal Writ Petition challenges the Judgment and Order dated 28 August, 2023 passed by the Sessions Judge, Borivali Division, Dindoshi. In Criminal Appeal No.28 of 2023. The respondent no.2 (wife) filed Domestic Violence complaint before the Metropolitan Magistrate Court at Andheri, Mumbai, under Section 23(1), along with Sections 18, 19, 20, 21 and 22 of

Protection of Women from Domestic Violence Act, 2005. In the said application the respondent no.2 filed an Interim Application Exhibit-4 seeking interim maintenance along with compensation for rental accommodation and from aiding and abetting in, the commission of domestic violence by the petitioner. To the said Interim Application the petitioner filed his reply opposing said application. Parties have filed affidavit of asset and liabilities. After considering all the documents on record the Metropolitan Magistrate Court at Andheri by its order dated 29 December, 2022 granted an interim maintenance amount of Rs.35,000/- to the Respondent No.2 (wife) from the date of the application till decision of the main petition. And directed to pay security deposit of Rs.50,000/- and monthly rent of Rs.15,000/- towards rental of accommodation of 1BHK flat at Malad (East).

2. The petitioner being dissatisfied with the Judgment and order dated 29 December, 2022 filed Criminal Appeal before the Sessions Court at Dindoshi, Mumbai. The Sessions Court after hearing the parties by its order dated 28 August, 2023 partly allowed the petitioners appeal by reducing the interim maintenance amount from Rs.35,000/- to Rs.25,000/- per month. Rest of the order was not modified.

3. The present criminal writ petition challenges the Judgment and order passed by the Sessions Court dated 28 August, 2023.

4. I have heard both the counsel. I have gone through the documents and record. It is the case of the petitioner (husband) that the Sessions Court and the Metropolitan Magistrate Court

have not taken into consideration that there is a huge liability on the petitioner (husband) as he has custody of both the sons and admittedly he is spending on the educational expenses of the sons. He further submitted that the turnover of the firm of the petitioner has drastically come down during the pandemic period. He further submitted that the monthly income of the petitioner is gross Rs.1,00,000/- per month and after considering the expenses the net income of the petitioner is approximately Rs.65,000/-per month. He further submitted that respondent no.2 (wife) is earning and she can sustain on her income. He further submitted that since the respondent no.2 (wife) is staying with her parents there will be no question of granting her rental compensation. He further submitted that the second son of petitioner and of respondent no.2 is now shifted to Dehradun for education and the fees of the said school is roughly around Rs.6,00,000/- per year. He has further submitted that the elder son is suffering from epilepsy and LD. He therefore, submitted that the amount granted by the Sessions Court is not a reasonable amount and the said amount should be reduced to zero.

5. Ms. Shilpa Joshi appearing for respondent no.2 (wife) in Criminal Writ Petition No.3702 of 2023 and petitioner in Writ Petition No.3803 of 2023 made her submission on behalf of the wife. She submitted that the documents on record prove that the husband was operating his business and has 3 different firms. She submitted that the husband is in the business of paper trading and printing packaging. She submitted that the husband has his proprietorship firm Tanussh International Trading. She further

submitted that the husband also had a firm called as Dhruv. She also submitted that there is one more firm by name of “Sun Global” which the husband was operating but was shown in the name of the wife. She submitted that her client (wife) had nothing to do with the business of paper trading. She submitted that the husband used to rotate entries from the 3 different firms and to the personal account of the husband and also in the personal account of the wife. She submitted that bank statements of all these firms would prove that monies have been the transferred as per the convenience of the husband. She further submitted that the husband had infact borrowed money from her father. She also submitted that after there were disputes between the husband and wife, the wife had no option but to leave the house of the husband due to the harassment from the husband and reside with her parents. She further submitted that the wife thereafter had to work with a firm called from Shreeji Realities Private Limited where she was getting a salary of roughly Rs.25,000/- per month. However, in January 2023, she lost her job and she is not having any income source from January, 2023. However she is trying her best to earn some income for survival. She therefore submitted that the order passed by the Judicial Magistrate First Class should be retained and the impugned order passed by the Sessions Court should be set aside.

6. I have heard both the counsels and I have gone through the documents on record. By an order dated 19 July, 2021 the husband has been injuncted from creating any third party interest in the flat at Shagun Tower, Gen. A.K. Vaidya Marg, Malad (E),

Mumbai. There is no dispute that the impugned order passed by the Metropolitan Magistrate Court is an interim order and the main proceeding are still pending before the Metropolitan Magistrate Court. The Sessions Court while disposing of the appeal categorically recorded that the main petition filed under Domestic Violence Act is pending before the Metropolitan Magistrate Court. Hence as interim arrangement, the maintenance amount was granted by the Metropolitan Magistrate Court at the rate of Rs.35,000/- was reduced to Rs.25,000/- per month. The Advocate for the petitioner husband has filed along with this writ petition, compilation of 186 pages and thereafter filed one more compilation of 220 pages. All these documents are pertaining to bank entries and the income tax returns filed by the husband.

7. The husband has already filed the divorce petition against the wife, so also the wife has filed a divorce petition against the husband. The husband has also filed a certificate of his chartered account of the firm M/s Tanush International, which is his proprietorship firm. Along with the said certificate he has also enclosed a chart of the turnover for last six years. The turnover of the said firm for the final year 2022-2023, is Rs.16,53,554/- After paying a GST the said amount comes to Rs.13,55,915. It is the case of the petitioner that considering the expenses the net amount would be Rs.7,36,000/-. And considering the personal expenses the petitioner hardly earns Rs.65,000/- per month. The Advocate for the respondent no.2 wife has showed me various bank entries in the compilation of documents produced before me. The said entries have been considered by the Sessions Court while passing

its order.

8. Taking into considering this is an order passed on an interim application and the main petition is yet to be heard. Therefore, I find no perversity in the order passed by the Sessions Court.

9. Hence, no case is made out by either of the parties at this stage to entertain with the Writ Petitions. Both the Writ Petitions are dismissed.

(RAJESH S. PATIL, J.)