



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

CRIMINAL WRIT PETITION NO.204/2023 & 468/2023

W.P. NO. 204/23:

Shrawan s/o Rajeramji Bansure

..Petitioner

versus

Sau.Ankita Shrawan Banasure

..Respondent

.....
Mr. S.I. Khan, Advocate for the petitioner

Mr. Mahesh Rai, Advocate for Respondent
.....

W.P. NO. 468/23:

Sau.Ankita Shrawan Banasure

..Petitioner

versus

Dr. Shrawan s/o Rajeramji Bansure

..Respondent

.....
Mr. Mahesh Rai, Advocate for the petitioner

Mr. S.I. Khan, Advocate for Respondent
.....

CORAM: ANIL L. PANSARE, J.

DATED : 7th September, 2023.

PC:

Heard.

2. The petitioner in W.PNo. 204/2023 is the husband and respondent is the wife. In W.PNo. 468/2023 the petitioner is the wife while the respondent is the husband. Both of them are aggrieved by the orders dated 10.02.2023 passed by the learned Additional Sessions Judge, Wardha in PWDVA Appeal No.02/2021. The learned Sessions Court in the Appeal filed by the wife u/s 29 of the Protection of Women from Domestic Violence Act, 2005 Act, has enhanced the amount of

interim maintenance from Rs. 6000/- to Rs. 15,000/-.

3. The learned counsel for the husband submits that both the Courts failed to consider the law laid down by the Hon'ble Supreme Court, in the case of Rajesh vs. Neha, reported in (2021) 2 SCC 3241. The Hon'ble Apex Court in the final directions, has held as under :-

“ 130: In view of the foregoing discussion as contained in Part B -I to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India :

(a) Issue of overlapping jurisdiction

131. To overcome the issue of overlapping jurisdiction and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/ District Courts/ Magistrate Courts throughout the country. We direct that :

- (i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or set off, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding;
- (ii) it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;
- (iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding.

(b) Payment of Interim Maintenance.

132. The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both the parties in all maintenance

proceedings, including pending proceedings before the concerned Family Court/ District Court/ Magistrates Court, as the case may be, throughout the country.

(c) Criteria for determining the quantum of maintenance

133. For determining the quantum of maintenance payable to an applicant, the Court shall take into account the criteria enumerated in part B-III of the judgment.

134. The aforesaid factors are however not exhaustive, and the concerned Court may exercise its discretion to consider any other factor/s which may be necessary or of relevance in the facts and circumstances of a case.

(d) Date from which maintenance is to be awarded.

135. We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in part B-IV above.

(e) Enforcement/Execution of orders of maintenance.

136. For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V.Act; and Section 128 of the Cr.P.C., 1973 as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the C.P.C., more particularly Sections 51, 55, 58, 60 r.w. Order. 21.”

4. Admittedly, the Courts below have not considered the aforesaid judgment. The learned counsel for the wife, however, submits that the husband is drawing salary of more than Rs.70,000/-and therefore the findings rendered by the Courts below are not in consonance with the law.

5. I do not find any substance in the aforesaid submission inasmuch as the law laid down by the Hon'ble Supreme Court having been not followed, the judgments passed by the Courts below shall not sustain in law. Hence, the order:-

ORDER

- (i) W.P .No.204/2023 is allowed.
- (ii) W.P. No. 468/2023 is dismissed.
- (iii) The impugned judgment and order dated 10.02.2023 passed by the learned Additional Sessions Judge, Wardha in PWDVA Appeal No. 02/2021. so also the order passed by the learned Judicial Magistrate First Class, Ashti dated 20.02.2021, are hereby quashed and set aside.
- (iii) The matter is remanded back to the learned Judicial Magistrate, First Class, Ashti to consider it afresh, in the light of the ratio laid down in *Rajnish's* case (supra).

5. After dictating the order, the learned counsel for the wife makes a request to expedite the hearing of interim application. This request may be made to the concerned Judge, who may consider the same on its own merit, considering his docket.

[ANIL L. PANSARE, J.]