



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1796 OF 2024

**SAINATH MANOHAR KHANJODE
VERSUS
SAU VIJAYMALA SAINATH KHANJODE AND OTHERS**

.....
Advocate for Applicant : Mr. Hamza Khan Pathan
.....

**CORAM : Y.G. KHOBRAGADE, J.
DATE : 16.10.2024**

ORDER :-

1. Heard at length the learned counsel appearing for the Petitioner.
2. By the present petition, the Petitioner has impugned the order dated 16.07.2004 passed by the learned Additional Sessions Judge-3, Nanded in Criminal Appeal No.37/2021 arising out of interlocutory order passed below Exh.5 in PWDVA No.101/2020 dated 14.10.2021 by the learned 7th Jt. J.M.F.C., Nanded.
3. The present Respondent Nos.1 to 4 are the Original-Applicants and the Petitioner is the Original/Non-Applicant in proceeding PWDVA No.101/2020 instituted under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short the DV Act).

4. The marriage between Petitioner and Respondent No.1 was solemnized on 04.09.2000. Out of their matrimonial relations, they are blessed with three children i.e. Respondent Nos.2, 3 and 4. The Respondent No.1 alleged that her husband was in illicit relationship with another lady and she saw him in compromising condition with said lady. Thereafter, her husband (the Petitioner) attempted to burn her alive by pouring kerosene on her person. So also, her husband his addicted to liquor. Therefore, she lodged a complaint with the Women's Grievance Redressal Forum, S.P. Office, Nanded.

5. According to the Respondent No.1, her husband, the present Petitioner is in Govt. service and drawing monthly salary to the tune of Rs.67,100/-, besides monthly salary the Petitioner/Non-Applicant is also receiving rent to the tune of Rs.20,000/- and annual agricultural income of Rs.4,00,000/- (Rupees Four Lakhs). However, the Petitioner neglected to maintain her and the children. Therefore, they prayed for interim maintenance @ Rs.10,000/- per month.

6. The Petitioner filed a reply and resisted the said application on the ground that the Respondent-Wife and Children are residing separately without any cause. So also, he is taking care of expenses of grocery and education of the children. The Respondent-Wife is running a beauty parlor

and earns sufficient income to maintain herself and the children. Therefore, he is not liable to pay any maintenance.

7. On 14.10.2021, the learned trial Court passed an order and directed the present Petitioner to pay Rs.2,000/- per month to per aggrieved person i.e. total Rs.8,000/- from the date of the application.

8. It is matter of record that the Petitioner had challenged said order of interim maintenance in Criminal Appeal No.37/2021. On 16.07.2024, the learned Additional Sessions Judge passed the impugned judgment and order and dismissed the appeal holding that the appeal to the extent of Appellant No.2 would not sustain and the Petitioner has not challenged the order of granting maintenance to the major child.

9. The learned counsel appearing for the Petitioner canvassed in vehemence that the Respondent Nos.2 and 3 are major and they are not child within the meaning of Section 2(b) of the DV Act, however, the learned trial Court granted interim maintenance to the Respondent No.3 though she does not fall within the ambit of child. It is further canvassed that, the learned trial Court as well as the Appellate Court failed to appreciate the fact that the present Petitioner constructed house by obtaining loan and he is required to pay loan installments. The Petitioner is drawing a meager amount of salary of

Rs.17,045/- after statutory deductions and the Respondent No.1 receiving rent of Rs.6,000/- which earlier the Petitioner was collecting. Therefore, the impugned judgment and order as well as the interim order dated 14.10.2021 is illegal and bad in law.

10. It is not in dispute that the Respondent No.1 married the present Petitioner on 04.09.2020 and out said wedlock they are blessed with three children i.e. Respondent Nos.2, 3 and 4 and the marital relation between the Petitioner and Respondent No.1 is intact. It has been alleged that the Petitioner was in illicit relations with another lady and she saw her husband in comprising condition with said lady on which account domestic violence is raised as against the Respondent. Therefore, the Respondent No.1 filed proceeding under Section 12 of the DV Act along with an application for interim maintenance. On 14.10.2021, the learned trial Court passed an order and granted interim maintenance @ Rs.2,000/- per month in favour of the aggrieved persons i.e. the Respondents.

11. The Petitioner contended that he is drawing a meager salary of Rs.17,045/- after statutory deductions, however, the learned trial Court recorded findings that the Petitioner is drawing gross salary to the tune of Rs.86,975/- and after statutory deductions he is drawing net salary of Rs.54,045/-. Besides this the present Petitioner is receiving rent of Rs.6,000/-

which comes to total Rs.60,000/- annually.

12. On 16.07.2024, the learned Additional Sessions Judge passed the impugned order and observed in para no.10 that the Petitioner has obtained loan of Rs.42,62,000/- for purchasing a plot and raising construction of two storeyed building. So also, the Petitioner is maintaining his mother. However, he cannot absolve the responsibility to maintain the wife and children. The learned trial Court granted meager amount of maintenance @ 2,000/- per month to each aggrieved persons. In para no.12 the Revisional Court held that the aggrieved Party / Respondents produced the salary certificate of the Petitioner for the month of September-2002 at Exh.18 which proves that, the Petitioner drawn last salary of Rs.1,16,110/- and net salary of Rs.75,429/-. The Respondent Nos.2 to 4 are taking education and said fact is not denied by the present Petitioner. No doubt, Respondent No.2- Sakshi attained the age of majority, therefore, she is not child within the meaning of Section 2(b) of the DV Act. The Petitioner has not raised specific plea to show that on the date of filing of the application under Section 12 of the DV Act, the present Respondent Nos.3 and 4 were major. Per contra, it appears that the Respondent Nos.2 to 4 were minors on the date of the filing of the application under Section 12 of the DV Act.

13. In case of **Kalyan Dey Chowdhury V/s. Rita Dey Chowdhury Nee**

Nandy; (2017) 14 SC 200, wherein, the Hon'ble Supreme Court considered the judgment delivered in **Dr. Kulbhushan Kumar V/s. Raj Kumari and Anr.; (1970) 3 SCC 129**, and held that the wife is entitled for maintenance of 25% of income of her husband.

14. In the case in hand, the learned Appellate Court specifically recorded findings that last salary drawn of the present Petitioner is Rs.75,429/- after statutory deductions. Therefore, if this net salary is considered and the ratio of 25% is made applicable which comes to Rs.29,028/-. However, the learned Sessions Judge enhanced the maintenance amount to the tune of Rs.10,000/- per month to the extent of Respondent Nos.1, 3 and 4 which does not appear perverse, illegal and bad in law. Therefore, I do not find any substantial grounds to interfere with the impugned order. Hence, the petition is dismissed.

[Y.G. KHOBRADE, J.]