



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 314 OF 2024

Dr Bhalchandra Vasantrya Nikam.

...Applicant.

Versus

Dr Sou Ranjana Bhalchandra Nikam and Others. ...Respondents.

Mr. Daulat G. Khamkar for the Applicant.

Ms. Shilpa Gajare, APP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : April 10, 2024.

P. C. :

1. Heard.

2. By this application, the challenge is to the order dated 14th February 2024 passed by the Additional Sessions Judge, Solapur allowing the application for stay subject to the payment of maintenance of Rs.15,000/- per month along with Rs.30,000/- being part of the arrears of maintenance passed by the trial Court to the Respondent – wife.

3. The appeal under section 29 of the Protection of Women from Domestic Violence Act, 2005 came to be filed by the Applicant –

husband against the judgment and order dated 28th August 2023 passed by the JMFC in DV Application No. 1312 of 2015. By the said judgment and order, the trial Court granted interim maintenance of Rs.15,000/- per month to the Respondent wife herein from the date of decision and compensation of Rs.2 lakh and litigation cost of Rs.5,000/-.

4. By way of Appeal No.49 of 2023, the Applicant husband approached the Sessions Court and filed an application for stay of the order dated 28th August 2023 passed by the trial Court. The Appellate Court considered the findings of the trial Court that in view of the physical condition of the Respondent wife the compensation as well as maintenance of Rs.15,000/- was granted and that the husband has not paid a single paisa towards the maintenance as per the order. The Appellate Court held that as the appeal will take its own time to be decided, the stay was required to be granted subject to payment of maintenance of Rs.15,000/- per month along with amount of Rs.30,000/- to be paid towards part payment of arrears of maintenance.

5. Learned counsel appearing for the Applicant husband would submit that the complaint came to be filed on 27th August 2015 and no interim relief was asked for or granted. He submits that even prior

to the filing of complaint, a petition for judicial separation was filed on 13th October 2015 and that petition has been allowed on 26th July 2018. He would submit that the Respondent wife is working and as such the condition subject to which the stay is granted is onerous.

6. Considered the submissions and perused the record.

7. The judgment of the trial Court dated 28th August 2023 clearly held on the basis of evidence on record that the Respondent wife was earlier practicing medicine, however, presently she is not in practice. The trial Court further held that apart from oral deposition of the Applicant husband that the Respondent wife is in practice, there is no document produced on record. The trial Court noted that the contention of the Appellant husband is that from the year 2010, his medical practice has reduced, however, it is not his case that he is not practicing medicine.

8. Considering the findings of the trial Court, as it has been held that the Respondent – wife is not working and in addition to that it appears that the Respondent wife is handicapped, the order of grant of maintenance was passed by the trial Court. The Appellate Court has therefore rightly considered the said finding of the trial Court and has granted the stay subject to the condition of payment of

maintenance amount. As it is not demonstrated that there is any provision made for the maintenance of the Respondent wife during the pendency of proceedings, no infirmity can be found in the order of the Appellate Court granting stay subject to the grant of maintenance. The discretion vested in the Appellate Court has been rightly exercised. Even if the petition for judicial separation has been allowed, the same does not constitute severance of the status of parties as would happen in the case of divorce. As the appeal will take its own time to be decided in the interregnum, the Respondent–wife cannot be left without any maintenance. The order of trial Court granting maintenance is passed after evidence is led and till the same is modified or reversed in appeal, the right vested in the Respondent – wife to the maintenance by the judgment of trial Court cannot be easily disturbed. The Appellate Court has therefore on the basis of findings of trial Court rightly exercised the discretion and granted stay subject to payment of maintenance.

9. Having regard to the discussion above, there is no merit in the application. Application is dismissed.

[Sharmila U. Deshmukh, J.]