



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION NO. 137 OF 2023

Prasad Tukaram Chavan

... Applicant.

Versus

Shailaja Prasad Chavan and Ors.

... Respondents.

Mr. Anilkumar K. Patil, for the Applicant.
Mr. Akshay Kulkarni, for the Respondents.
Ms. Shilpa Gajare, APP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : March 19, 2024.

P. C. :

1. Heard.

2. By this Petition, exception is taken to the order dated 28th February, 2023, passed by the Appellate Court in Criminal Appeal No.49 of 2015, enhancing the interim maintenance granted to the Respondent-wife and the minor child aged about 13 years. In an Application filed under the DV Proceedings, the Respondent-wife was granted a sum of ₹3,000/- for herself and ₹2,500/- for the daughter. As against the meager maintenance granted, Appeal came to be filed in the year 2015 before the Appellate Court. The Appellate Court considered the affidavits of disclosure of both the parties. In the

Respondent-wife's affidavit of disclosure, it was stated that she has no source of income and the affidavit of disclosure of the Applicant disclosed a monthly income of ₹1,10,000/-. The Appellate Court considered the amount of maintenance which was granted in the Application under Section 125 of the Code of Criminal Procedure, 1973 as well as in the Family Court proceedings, amounting to ₹12,500/- and upon comparative analysis has enhanced the interim maintenance to ₹10,000/- p.m. to the Respondent-wife and ₹5,000/- p.m. to the minor child from the date of filing of Appeal i.e. 16th March, 2015.

3. Learned counsel appearing for the Applicant would submit that the grant of interim maintenance is based on the affidavit which has been filed of the Respondent-wife that she has no source of income. He submits that in the year 2014, the same submission was made for the purpose of seeking maintenance. He submits that the Applicant is already paying maintenance under the different statutes and the grant of maintenance from the date of filing of the Appeal of the year 2015 will cast financial burden upon the Applicant. He further submits that the Appeal was filed in the year 2015 and has been decided in the year 2023 and the Applicant is being unnecessarily burdened due to lapse of time in adjudication of the Appeal.

4. *Per contra*, learned counsel appearing for the Respondent-wife would submit that the necessary factors required for assessing the quantum of maintenance has been duly considered by the Appellate Court while granting the enhanced maintenance. He submits that the Appellate Court has rightly granted the maintenance from the date of the filing of the Appeal i.e. 16th March, 2015 and the period spent in adjudication cannot be detrimental to the Respondent-wife.

5. Considered the submissions and perused the record.

6. While adjudicating the quantum of maintenance, the Appellate Court has considered the affidavit of disclosure. The impugned order indicates that there was no material brought on record to demonstrate that the Respondent-wife has any source of income although she is a duly qualified doctor. Merely possessing higher qualification will not *ipso facto* result in rejecting the Application for maintenance. The Appellate Court has considered that the monthly income of the Applicant is ₹1,10,000/- and has also considered the interim maintenance which has been granted under the different statutes. After assessing the relevant factors, which also complied with the directions of the Apex Court in the case of ***Rajnish v. Neha*** reported in **(2021) 2 SCC 324**, the Appellate Court has enhanced the monthly maintenance to be granted from the date of filing of Appeal

i.e. 16th March, 2015. No fault can be found in the quantum of maintenance which has been assessed by the Appellate Court. The grievance is that the maintenance is granted from the date of filing of the Appeal. The same is in consonance with the decision of the Apex Court in the case of ***Rajnish vs. Neha*** (supra). No doubt as the Appeal was of the year 2015, it was expected that the same would be decided expeditiously so as to not operate to the detriment of either of the parties. However, the fact remains that the Appeal of the year 2015 has been decided in the year 2023 and following the mandate of the Apex Court, the same has been rightly granted from the date of filing of the Appeal.

7. In that view of the matter, there is no infirmity in the order of the Appellate Court. The Revision Application stands dismissed.

8. Needless to clarify that as the main application is pending for adjudication, the same is required to be decided by the trial Court on its own merits and uninfluenced by the observations made in this order.

[Sharmila U. Deshmukh, J.]