



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4575 OF 2021

Ajmal Mohammad Hanif Mulla

... Petitioner.

Versus

Mosina Ajmal Mulla And Anr.

... Respondents.

Mr. Somay Pawar i/by Mr. Pratik Jadhav, for the Petitioner.

Mr. Pankaj Kandhari i/by Mr.Sachin Bhaskar, for Respondent Nos.1 and 2.

Ms. M.R.Tidke, APP for the Respondent-State.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : FEBRUARY 07, 2024

P. C.:

1. By this Petition, the challenge is to the judgment dated 7th October, 2021 passed by the Sessions Court in Criminal Appeal No.80 of 2014, partly allowing the Appeal and increasing the amount of maintenance granted to the Respondents No.1 and 2 to Rs.20,000/-.

2. Heard Mr. Somay Pawar, learned counsel for the Petitioner, Mr. Pankaj Kandhari, learned counsel for Respondent Nos.1 and 2 and Ms. Tidke, learned APP for the Respondent-State.

3. Learned counsel appearing for the Petitioner submits that

the learned Judicial Magistrate, First Class had granted a sum of Rs.4,500/- and the Sessions Court without any reasons has enhanced the maintenance to Rs.20,000/- p.m. He further submits that the Sessions Judge failed to take into consideration that the Petitioner has remarried and has two children. He submits that the Petitioner is working as a teacher and considering his income, the amount granted by the trial Court could not have been enhanced.

4. *Per contra*, learned counsel appearing for the Respondents submits that there are arrears of around Rs.11,00,000/-. He submits that the Respondent Nos.1 and 2 are at the mercy of the Respondent No.1's parents and that the Respondent No.2 is a minor studying in 9th standard. He submits that no documents were brought on record by the Respondent No.1 to demonstrate his income and as such considering the needs of the Respondent Nos.1 and 2, the Sessions Court has rightly enhanced the amount to Rs.20,000/-.

5. Considered the submissions and perused the record.

6. The Application was filed by the Respondent No.1 under the provisions of the Protection of Women from Domestic Violence

Act, 2005, seeking various reliefs. It was pleaded that there was ill-treatment of the Respondent No.1 at the hands of the Petitioner and his family members and that in the year 2009, she was ousted from the matrimonial house and was threatened not to return without bringing a sum of Rs.2 lakhs from her parents. She submits that the relatives mediated in the dispute and sent her back to the matrimonial house. However, the Respondent No.1 assaulted her and on 15th January, 2011, she was once again driven out of the matrimonial house and is residing with her parents house till date. It was pleaded that she and her daughter have no income and unable to maintain herself, whereas the Respondent No.1 is working as a teacher and earning a salary of Rs.2,88,000/- and that the Respondent No.2 is a pensioner and getting monthly pension of Rs.13,000/-.

7. The Application came to be resisted by the Respondent Nos.1 and 3. According to the Petitioner, he was working as a teacher and as the demands of the Respondent no.1 could not be fulfilled she has left the matrimonial house.

8. It was his contention that, he was getting monthly salary

of Rs.48,000/- from which he required to pay the installments of loan and also look after the Respondent Nos.2 and 3, who are his parents.

9. Learned Judicial Magistrate First Class, after recording the evidence partly allowed the application and directed the Petitioner to pay the maintenance of Rs.2,000/- p.m. to the Applicant No.1 and Rs.1,000/- p.m. to the Applicant No.2 and in addition a sum of Rs.1,500/- towards rent and Rs.10,000/- as compensation.

10. The order of the learned Judicial Magistrate First Class came to be challenged by the Respondent No.1 by preferring the Appeal on the ground that the inadequate amount has been granted as maintenance and sought maintenance of Rs.10,000/- p.m. to the Applicant Nos.1 and 2. The Appellate Court considered the evidence on record and observed that the Respondent No.1 has proved the act of domestic violence. The Appellate Court also considered that no documents have been produced on record to show that the wife is earning and as such, held that she was unemployed and are not having sufficient income to maintain themselves. As regards the quantum, the Appellate Court observed

that in the year 2011, when the domestic violence proceedings were filed, the petitioner's salary was more than Rs.24,000/- and as such took a judicial note that by passage of time, the Respondent No.1 must be getting more than Rs.60,000/- as monthly salary. The Appellate Court also took into consideration the fact that the Respondent No.1 has purchased two immovable properties which make it evident that the financial position of the Respondent No.1 is good.

11. Considering the evidence which has come on record, the Appellate Court has granted maintenance of Rs.7,000/- to the Applicant Nos.1 and 2 and rent of Rs.1,500/- from date of Application till January, 2017 and from February, 2017 at the rate of Rs.10,000/- p.m. to the Applicant No.1 and Rs.5,000/- p.m. to the Applicant No.2 and Rs.5,000/- towards monetary relief for discharge of rent.

12. Considering the material which has come on record, it does not appear that the salary slip of the petitioner was placed on record. As such, the trial Court as well as the Appellate Court have involved an element of guess work to ascertain the salary of the

Petitioner. Before this Court, the learned counsel appearing for the Petitioner would submit that the salary is in the sum of Rs.80,000/-, however there are dependents on the Petitioner and as such, the sum of Rs.20,000/- is excessive. It needs to be noted that the Appellate Court has graded the maintenance which has been granted by taking into consideration that when the application was filed before the Trial Court, the salary was found to be more than Rs.24,000/- and as such, has granted a sum of Rs.7,000/- towards maintenance and Rs.1,500/- towards the rent and has thereafter, from February, 2017, granted Rs.10,000/- p.m. to the Applicant no.1 and Rs.5,000/- to the Applicant No.2, which cannot be said to be excessive.

13. The act of domestic violence which is *sine qua non* for the grant of the application has been held to be established by the Respondent No.1 and as such, she was entitled to the reliefs sought. It is also come on record that she has suffered economic abuse as no provision was made for her maintenance. In the absence of any material on record as regards the income, the Appellate Court has took into consideration the fact that he being a

government servant his salary must have increased over the last decade and as such must be getting more than Rs.60,000/-. At the same time, it needs to be noted that in addition to the maintenance, the provision of alternate accommodation is also provided by the statute and the sum of Rs.5,000/- is towards amount of rent. Considering the income the sum of Rs.10,000/- granted to the Applicant no.1 and Rs.5,000/- to the Applicant No.2 cannot be said to be excessive. Even if the Petitioner has two children from second marriage, the salary of the Petitioner is stated to be around Rs.80,000/- and the maintenance of Rs.20,000/- is not excessive.

14. In that view of the matter, there is no merit in the Petition. Petition stands dismissed.

(Sharmila U. Deshmukh, J.)