

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

REVISION APPLICATION NO.2 OF 2024

Kamlesh Vashdev Laungani ...Applicant

V/s.

Namrata Kamlesh Laungani ...Respondent.

Mr. R. S. Chaubey for the Applicant.

Ms. Pulkeshi Gaikwad a/w. Mr. Nikunj Rathod i/b Dinesh D. Tiwari & Associates for Respondent No.1.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 4th JANUARY, 2024.

P. C.:-

1. By this petition the challenge is to the order dated 16th December 2023 passed by the Sessions Court in Criminal Appeal No.200 of 2022 permitting the respondent- wife to withdraw 25% of the amount of interim maintenance which was deposited in the Court by the applicant-husband.

2. Heard Mr. R. S. Chaubey for the Applicant and Mr. Pulkeshi Gaikwad a/w. Mr. Nikunj Rathod i/b Dinesh D. Tiwari & Associates for Respondent No.1.

3. Mr. Chaubey, learned counsel appearing for the applicant

submits that the order of maintenance passed by the Trial Court in an Application under Domestic Violence Act was an ex-parte order as against which the Appeal came to be preferred. He would further submit that as a condition of stay, 50% of the interim maintenance granted was directed to be deposited *vide* order dated 31st March 2023. He submits that Application came to be filed by respondent -wife seeking permission to withdraw the amount for the reason that she is facing economical problem. He submits that the case of the applicant is that the respondent-wife is an unchaste wife and is residing with applicant's brother in law i.e. his sister's husband and as such not entitled to maintenance. He would further submit that the maintenance has been granted for the respondent and her daughter whereas the applicant also denies the paternity of the daughter. He submits that considering the provisions of section 18 of the Hindu Adoptions & Maintenance Act, 1956 as well as Section 125 of Cr. P. C. an unchaste wife is not entitled to maintenance. He seeks to rely upon the decision of the Apex Court in the case of *Rajnish vs. Neha & Anr., Criminal Appeal No.730 of 2020 (Supreme Court of India)* and decision of Madras High Court in case of *Perumal vs. Saraswathi, (2021) 3 Mh. L. J. 82*.

4. *Per contra*, learned counsel appearing for the respondent

supports the impugned order and submits that admittedly the respondent is not having any source of income and as such the Application was filed for withdrawal of the amount which has been granted *vide* order of the Family Court.

5. Considered submissions and perused the record.

6. Application was filed in the Court of the Chief Metropolitan Magistrate under Sections 12, 18, 19, 20 to 23 of the Domestic Violence Act in which by way of interim relief an Application was filed claiming maintenance of Rs. 5 Lakhs as also sum of 2 crores towards compensation.

7. Admittedly, the parties are married and there is a Divorce Petition which is pending before the Family Court. The order of the Trial Court would indicate that the respondent and their Advocate had remained absent and considering the provisions of the Domestic Violence Act as well as the pleading of the applicant a sum of Rs.50,000/- was directed to be paid as interim maintenance to the applicant and her daughter *vide* order dated 24th March 2021. This order is sought to be challenged by way of an Appeal before the Sessions Court. In the Appellate Court the matter is still pending

adjudication and as such an Application has been moved for withdrawal of part of the amount. The stated object of the Domestic Violence Act is to provide for effective protection of rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family or matters connected thereto or incidental thereto. It is with this avowed object that the Act has been enacted providing for various reliefs to the persons alleging domestic violence which includes protection orders as well as monetary reliefs by way of maintenance.

8. Pertinently, the maintenance order which is to be passed in favour of the aggrieved persons is in addition to an order of maintenance passed by any other law for the time being in force. The contention of the the learned counsel for the applicant that the respondent is living a life of adultery and that the paternity of the daughter itself is in dispute requires evidence to be led. The whole purpose of grant of interim relief of maintenance is to ensure that the wife does not live in penury. In the instant case, apart from the wife there is a grown-up daughter for whose day to day subsistence maintenance is required.

9. By order of the year 2021, the order of interim maintenance

has been granted and despite the lapse of period of 2 years, no maintenance has been paid to the respondent by reason of the pendency of the Appeal proceedings. The fate of the Appeal proceedings will be decided as and when the same is adjudicated. However in the meantime the right of the respondent-wife cannot be permitted to be prejudiced by reason of delay in adjudication of the Appellate proceedings. By the impugned order, the Appellate Court has considered the submission that the respondent is facing economical problems in her daily life and rightly held that as far as the allegations are concerned they are yet to be proved before the Trial Court. While doing so, the Sessions Court has rightly distinguished the decision which is relied upon by learned counsel before this Court also. As regards the submission that Section 18 (3) of the Hindu Adoptions and Maintenance Act, 1956 does not entitle the Hindu wife to separate residence if she is unchaste or ceases to be an Hindu, the Section does not provide that even in the case of grant of interim maintenance without an evidence being led, only on the basis of allegations of husband that she is leading an unchaste life, no maintenance can be granted to her.

10. This certainly cannot be the object of any provision much less the provision of the Domestic Violence Act which is enacted for the protection of the persons facing domestic violence. By permitting

respondent wife to withdraw 25% of the interim maintenance deposited in the Court, I do not find any infirmity in the impugned order.

11. Revision Application being devoid of merits stands dismissed.

(SHARMILA U. DESHMUKH, J.)

RAJESHWARI
SUBODH
KARVE

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by RAJESHWARI
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