



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.136 OF 2024

Namrata Kamlesh Laungani

.. Applicant.

Versus

Kamlesh Vashdev Laungani and Ors.

.. Respondents.

*Mr. Anish Sharma, Ms. Alka pandey i/by Mr. Dinesh Tiwari and Associates
for the Applicant.*

Mr.R.S. Chaubey, for Respondent No.1.

Coram : Sharmila U. Deshmukh, J.
Reserved On : April 26, 2024.
Pronounced On : May 03, 2024.

ORDER :

1. By this Application filed under Section 482 of the Code of Criminal Procedure, 1973, exception is taken to the order dated 16th December, 2023 passed by the Appellate Court permitting withdrawal of arrears of maintenance deposited by the Respondent No.1 only to the extent of 25%.

2. The facts of the case are that the Applicant had filed DV application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, "DV Act") seeking various reliefs under Sections 18, 19, 20, 22 and 23 of the DV Act on 8th February, 2017. The respondent No.1, who was resident of Congo,

Africa did not appear in the proceedings and on 4th December, 2019, the proceedings were directed to be proceeded *ex parte*. An order of interim maintenance came to be passed on 24th March, 2021 granting interim maintenance of Rs.75,000/- i.e. Rs.50,000/- towards the maintenance of the Applicant and the girl child and Rs.25,000/- towards rent. Despite the order of passing of interim maintenance, the same was not complied and distress warrant was issued against the Respondent No.1 vide order dated 17th November, 2021.

3. An appeal was preferred by the Respondent No.1 under Section 29 of the DV Act being Criminal Appeal No.200 of 2022. The Respondent No.1 also filed an application for stay below Exhibit 5. The Applicant filed an application below Exhibit-2 bringing it to the notice of the Appellate Court that the total outstanding as on the date of filing criminal appeal i.e. December 2022 was Rs.49,50,000/-. Vide order dated 31st March, 2023, the application for stay below Exhibit-5 as well as the application below Exhibit-2 was decided by the Appellate Court and stay was granted subject to Respondent No.1 depositing 50% of the entire arrears of maintenance. The Applicant deposited sum of Rs.17,50,000/- pursuant to the order dated 31st March, 2023. An application was moved below Exhibit-7 by the Applicant seeking directions to Respondent No.1 to pay the balance of arrears of interim maintenance which according to her was Rs.24,75,000/- and for permission to withdraw the amount of Rs.17,50,000/-. By the impugned order, the Applicant was permitted to withdraw 25% of the said amount.

4. The order dated 16th December, 2023 permitting the Applicant to withdraw 25% of the amount was challenged by the Respondent No.1 by way of Revision Application No.2 of 2024 before this Court. Vide order dated 4th January, 2024, the Revision Application was dismissed holding that the order does not suffer from infirmity by permitting the wife to withdraw 25% of the interim maintenance. Subsequently, on 22nd January, 2024, the present application has been filed challenging the same order, which was the subject matter of the earlier Revision Application No.2 of 2024, praying for quashing and setting aside the order dated 16th December, 2023 passed below Exhibit-7 in Criminal Appeal No.200 of 2022.

5. Heard Mr. Sharma, learned counsel appearing for the Applicant, Mr.Chaubey, learned counsel for Respondent No.1.

6. Mr. Sharma, learned counsel for the Applicant would submit that the parties were married in the year 1994 and were separated in the year 2013. He would submit that the Respondent No.1-husband is residing in Congo, Africa and has number of businesses and enjoying a lavish and luxurious life. He submits that on the other hand, the Applicant is unable to maintain herself and has no shelter and her daughter who is around 11 years is currently studying in an International School. He further submits that not a single penny has been paid towards the Applicant and her daughter's maintenance and the Applicant is dependent on her mother and on borrowings from relatives. He has taken this Court in detail through the order of grant

of interim maintenance. He would further submit that the application below Exhibit-7 was filed as despite the stay being granted subject to deposit of 50% amount which comes to Rs.25,87,500/-, only a sum of Rs.17,50,000/- was deposited. He would further submit that by application below Exhibit-7, the Applicant sought permission to withdraw the arrears deposited. He submits that after noting the economic problem of the Applicant, the Appellate Court instead of permitting the withdrawal of entire amount has permitted withdrawal of only 25% of the deposited amount. He submits that in the earlier round of litigation, the challenge by the Respondent No.1 was to the permission granted by the Appellate Court to withdraw 25% of the amount which has been rejected by this Court. He submits that however, the present application is at the instance of the Applicant-wife seeking to withdraw the entire deposited amount and the order in the earlier revision application would in fact enure to the benefit of the Respondent No.1-wife as the challenge by the Respondent No.1 had failed. He submits that if the said application is not considered, the Applicant would be rendered remediless. In support, he relies on the decision in the case of ***Kailash Nath vs. State of Uttar Pradesh, [MANU/UP/0986/2003]***.

7. *Per contra*, Mr.Chaubey, learned counsel appearing for the Respondent No.1 would submit that as in the earlier round of litigation, this Court had observed that there was no infirmity in the said order, entertaining the present application would amount to review of its own order. He would further submit that the specific

allegation of the Respondent No.1 is that the Applicant is living an adulterous life and even the paternity of the child has been denied. He submits that the provisions of Section 125(4) of the Code of Criminal Procedure, 1973 as well as Section 18(3) of the Hindu Adoption and Maintenance Act, 1956, disentitles a wife to maintenance if she is unchaste. He submits that the child was begotten despite the IVF treatment having been failed. He submits that the Applicant is residing with Respondent Nos.1's sister's husband and there is material on record to demonstrate that the Applicant and the Respondent No.1's brother-in-law are staying together as husband and wife. He would further submit that it is only when the Respondent No.1's sister filed a DV application against her husband that at the instigation of the Respondent No.1's brother-in-law the present application was filed by the Applicant. He further submits that there is no question of grant of any maintenance as the Applicant is being looked after by the Respondent No.1's brother-in-law with whom she is residing and that the daughter is also not entitled to the maintenance as she is born out of illicit relationship.

8. Considered the submissions and perused the record.

9. The factual matrix as regards the filing of the application and the passing of the order of interim maintenance has not been disputed. The same order of 16th December, 2023 had been challenged by the Respondent No 1 husband in earlier round of litigation on the ground that withdrawal should not be permitted as

the wife is not entitled to maintenance being unchaste. This Court had negated the challenge by holding that the allegations made required evidence to be led and had upheld the order dated 16th December, 2023. In the earlier round of litigation the issue as to the extent of withdrawal permitted by the Appellate Court was not the subject matter. Upon perusal of the order dated 4th January, 2024 there is no finding on the discretion exercised by Appellate Court as regards the extent of withdrawal and the issue decided was whether the wife can be permitted to withdraw the deposited amount.

10. In the present Petition, the challenge is to the quantum permitted to be withdrawn i.e. 25% of the arrears deposited as the application sought withdrawal of the entire arrears of maintenance. The challenge in the present Petition is therefore distinct and separate from the challenge in earlier round of litigation.

11. Coming now to the merits of the matter, this Court has already held that the allegations of unchastity are required to be proved after evidence has been led and in the meantime the right of the wife cannot be permitted to be prejudiced by reason of delay in adjudication of Appellate proceedings. This Court had also noted that the Appellate Court has considered the financial problems faced by the Applicant-wife. The Appellate Court as condition of stay has directed deposit of 50% of the arrears of maintenance by considering that no amount has been paid by the Respondent No.1 husband.

12. The Appellate Court while permitting the withdrawal to the

extent of 25% of arrears deposited noted the economical problem faced by the Applicant-wife and has thereafter permitted withdrawal to the extent of only 25%. As held in the earlier round of litigation the rights of the wife cannot be permitted to be prejudiced by reason of delay in adjudication. The Trial Court after consideration of the material on record has granted interim maintenance to the Applicant-wife and the minor child. It is not the case of the Respondent No.1 that the Applicant has any source of income. The submission is that the Applicant is living in an illicit relationship with the Respondent No.1's brother in law, who is maintaining her. The allegations can be substantiated only at the time of trial. In the meantime, the Applicant-wife must be able to sustain herself and her daughter during the pendency of the proceedings which is the whole object of grant of interim maintenance. The Appeal has been filed in the year 2022 and till now is pending for adjudication. The Applicant after being granted maintenance by the Trial Court cannot be made to suffer by reason of delay in adjudication of the Appeal. As stay has been granted by the Appellate Court to the order of grant of interim maintenance, which has not been challenged by the Applicant, it is necessary to ensure that the Applicant has some funds to sustain herself during the pendency of the Appeal. Considering that no maintenance was paid for almost two years and the Applicant-wife had to bear the financial burden despite being awarded interim maintenance, in my view, the Appellate Court ought to have permitted withdrawal of the entire amount deposited as arrears of maintenance.

13. The submissions canvassed by learned Counsel for Respondent No.1 to deny the benefit of withdrawal to the wife has already been negated in earlier round of litigation.

14. In light of the above, the Criminal Application is allowed. Consequently the impugned order dated 16th December, 2023 permitting withdrawal of only 25% of arrears deposited is quashed and set aside. The Applicant is permitted to withdraw the amount of Rs.17,50,000/- deposited in the Court by the Respondent No.1. Considering that the criminal appeal is of the year 2022 and pertains to the issue of maintenance, the Appellate Court is requested to decide the appeal expeditiously.

[Sharmila U. Deshmukh, J.]