

Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.112 OF 2024

Sarfaraz Qureshi

...Applicant

Versus

Shabana Sarfaraz Qureshi

...Respondent

Adv. Ahmad Nizam Shaikh for the Applicant.

Adv. Shamim Siddiqui a/w Ashif for the Respondent

Adv. Silpa Gajare, APP for the Respondent State.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : FEBRUARY 21, 2024

P. C. :

1. Heard.

2. By this Revision Application the challenge is to the order and judgment dated 7th November, 2023 passed by the Appellate Court in Criminal Appeal No. 129 of 2023 arising out of order dated 24th January, 2023 passed in CC No. 5900248/DV/2020.

3. The facts of the case are that, an application came to be filed under Section 12 of the D. V. Act seeking reliefs under Section 18, 19, 20 and 22 of the D. V. Act. In this proceeding, an application was filed under Section 23 of the D. V. Act seeking *inter alia* an order of monthly maintenance of Rs. 20,000/- to the Applicant No. 1 and Rs. 10,000/- to

the Applicant No. 2 minor child from the date of filing of the application. In this proceeding as mandated by the Apex Court in the case of **Rajnish Vs. Neha**, [AIR 2021 Supreme Court 569]. the Affidavits of Disclosure were filed by the parties. After the Affidavits were filed, an application came to be filed under Section 91 of Cr.P.C. by the Petitioner herein seeking production of the bank statements of the Respondent wife as well as the production of salary slips as according to the Petitioner, the Respondent wife was employed in a private company and had suppressed the said fact while filing her Affidavit of Disclosure. The Trial Court by order dated 24th January, 2023 allowed the application partially and granted monthly maintenance of Rs. 13,000/- to the Applicant No. 1 wife and Rs. 7,000/- to the Application No. 2 from the date of the application. As against this, the Petitioner herein preferred an Appeal before the Appellate Court in Criminal Appeal No. 129 of 2023. The Appellate Court by order dated 7th November, 2023 dismissed the Appeal.

4. Heard Mr. Shaikh, learned counsel for the Petitioner and Ms. Siddiqui, learned counsel for the Respondent.

5. Learned counsel for the Petitioner would submit that although the Affidavit of Disclosure was on record which set out the monthly income as well as monthly expenses of the Petitioner, the same were not considered by the Trial Court at the time of passing of order dated 24th

January, 2023. Pointing out to the order of the Trial Court he submits that the Trial Court has declined to consider the documents by observing that the file has become bulky at the initial stage and is quite difficult at this state itself to pick up the file. He submits that without considering the fact that the mother of the Petitioner is dependent on the Petitioner and the expenses which were disclosed in the Affidavit of Disclosure, the Trial Court has granted the amount of maintenance. He submits that the Appellate Court has confirmed the findings of the Trial Court and has in fact held that the counter Affidavit of assets and liabilities of both the parties are required to be considered at the time of finalizing the matter. He submits that there is clear violation of the mandate of the Apex Court in the case of ***Rajnish Vs. Neha***.

6. Per contra, learned counsel for the Respondent wife would submit that the Respondent wife is not employed and the Affidavit of assets and liabilities has been rightly filed. She would further submit that bank statements are filed and the same are also annexed at page No. 527 of the Petition. She would submit that the Trial Court and the Appellate Court has taken into consideration the Affidavit of assets and liabilities.

7. Considered the submissions and perused the record.

8. The Apex Court in the case of **Rajnish Vs. Neha** have laid down the guidelines to be followed by the Trial Court at the time of

determining the quantum of interim maintenance. At the time of grant of interim maintenance there is certain element of guess work involved and to reduce the element of the guess work to a substantial extent, the Affidavit of assets and liabilities would play a vital role. The Affidavit of assets and liabilities is required to disclose not only the income of the respective parties but also the monthly expenses of the parties as well as the dependents and all other liabilities. It is only upon consideration of the income as against the expenses and the dependents of the parties that the quantum of interim maintenance can be ascertained at the interim stage. In the present case, upon perusal of the order of the Trial Court, the Trial Court, in a very cryptic manner has held that it is the responsibility of the Petitioners to maintain the wife and child and having regard to the educational qualification, life style, maintenance is required to granted to the Applicant to fulfill their basic needs. The Trial Court has granted a sum of Rs. 13,000/- to the Respondent wife and Rs. 7,000/- to the child. It is expected that when the Affidavit of assets and liabilities are placed before the Trial Court there would be some discussion on the income of the parties as well as the expenses which are shown as well as the consideration of the dependents if any. It is only upon the consideration of the above facts, the quantum of interim maintenance is to be determined. The order of the Trial Court does not indicate any such

exercise being conducted by the Trial Court. The order of the Trial Court does not even mention the monthly income of the Petitioner in its finding and neither the monthly expenses nor the dependents of the Petitioner. General observations are made by the Trial Court without any reasoned findings, and on that basis a monthly maintenance of Rs. 13,000/- has been granted to the Respondent wife and Rs. 7,000/- to the child. What is more disturbing is the observation of the Trial Court that the parties have filed many documents in support of their rival contentions and it is quite difficult itself to pick up the file. There is no warrant for any such observations to be made by the Trial Court. It is expected of the Trial Court that the Affidavit of assets and liabilities as well as the documents which are in support thereof which are produced on record to be scrutinized, however bulky. I do not find from the judgment of the Trial Court that any such exercise has been conducted by the Trial Court.

9. The Appellate Court in similar fashion has upheld the finding of the Trial Court without any discussion on the Affidavit of assets and liabilities.

10. As regards the contention that an application under section 91 of Cr.P.C. for production of document is pending and before deciding the application the Court could not have ascertained the income. The

material on record demonstrate that before passing of the impugned order, by an application dated 9th November, 2022, the Respondent wife has produced the bank statement as well as the birth certificate of the minor child. As such, the application under Section 91 of Cr.P.C. has served his purpose. As regards the contention that application under Section 91 of Cr.P.C also sought production of the salary slip, it is the contention of the Respondent wife that she is unemployed and as such, the course available to the Petitioner is to seek issuance of summons at the time of the evidence to establish the employment of the Respondent wife. At the interim stage, while granting the maintenance, it is not necessary for summons to be issued to third party.

11. Having regard to the above, the order of the Trial Court as well as the Sessions Court is clearly unsustainable and the matter is required to be remanded to be decided afresh. However at the same time, it needs to be noted that it is contention of the Respondent wife that she is not working. In addition the minor child is aged about four years and is suffering from certain medical ailments and is also required to be admitted to school which will require educational expenses. Having regard to the above, the following order is passed.

- i) The impugned order dated 7th November, 2023 passed in Criminal Appeal No. 129 of 2003 and the

order below Exhibit 7 dated 24th January, 2023 passed in C. C. No. 248/DW/2020 are hereby quashed and set aside.

ii) The application below “Exhibit 7” is restored to the file of the Trial Court to be considered afresh after taking into consideration the Affidavit of assets and liabilities filed by the parties as well as by taking into consideration the guidelines laid down by the Apex Court in the case of **Rajnish vs. Neha**.

iii) Pending the adjudication of the application for interim maintenance, the Petitioner is directed to pay a monthly maintenance of Rs. 15,000/- to the Respondent wife which includes maintenance of minor child from the date of filing of the application before the Trial Court.

12. Needless to clarify that the amount of maintenance which will be paid by the Petitioner will be adjusted against the quantum decided by the Court.

13. Considering that the Application has been pending for a long period, the Trial Court is requested to decide the Application expeditiously and in any event within a period of 8 weeks from today.

14. Criminal Revision Application stand disposed of in the above terms.

(SHARMILA U. DESHMUKH, J.)