



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1019 OF 2023

Subhash Mahesh Sharma.

...Petitioner.

Versus

State Of Maharashtra
and Another.

...Respondents.

Mr. Ashok, M. Saraogi for the petitioner.
Mr. S. S. Pednekar, APP for the respondent-State.
Ms. Krupa Rajane for respondent no. 2.

Coram : Sharmila U. Deshmukh, J.

Date : January 8, 2024.

P. C. :

1. By this petition, challenge is to the order dated 17th February 2023 passed by the Additional Sessions Judge dismissing the criminal appeal preferred under section 29 of the Protection of Women from Domestic Violence Act, 2005 [for short "the DV Act"], filed by the petitioner seeking to challenge the order dated 13th June 2019 directing the petitioner to pay a sum of Rs.1 lakh per month toward the interim maintenance and restraining the petitioner from dispossessing the applicant from Flat No.602/11 and creating third party interest in it.

2. Facts of the case are that by an application under section 23 of the DV Act, the respondent had sought interim maintenance @ Rs.5 lakh per month for herself in accordance with the lifestyle of husband and an order of injunction restraining the petitioner from dispossessing her from Flat No. 602/11, Flower Valley Complex, Khopat, Thane (West).

3. The contention of respondent in the said application was that the petitioner owns 3 companies and has properties worth Rs. 500 crore; that she is not working and requires money for herself. According to the respondent, petitioner used to spend Rs. 22 lakh to Rs. 25 lakh per year towards charity and spiritual pursuits. The respondent pleaded that the petitioner is a businessman and is running 3 cloth factories.

4. The petitioner filed his reply and contested the application. By order dated 13th June 2019, the trial Court held that the petitioner has nowhere denied that he is not the owner of 3 companies and there is no contention that he is unemployed person. That from the Income Tax Form No. 16 of the petitioner, it is revealed that his income source is business and therefore the petitioner is legally and morally bound to maintain the respondent.

5. The trial Court held that the claim of Rs. 5 lakh per month requires a full fledged hearing of the matter to ascertain the living standards of both the parties and such relief cannot be considered at interim stage and held that it would be proper to grant Rs. 1 lakh per month towards the interim maintenance and to issue injunction order against the petitioner.

6. Learned Sessions Judge, in appeal against this order of trial Court, rejected the appeal accepting the findings of trial Court that there is no denial that the petitioner is the owner of 3 companies and upheld the grant of monthly maintenance at Rs.1 lakh. On the aspect of shared household, the learned Sessions Judge held that the contention of respondent is that she has co-habited with the opponents in Flat No.602/11, Kopat, Thane (West) and therefore the said property is a shared household.

7. Heard Mr. Saraogi, learned counsel appearing for the petitioner and Ms. Krupa Rajani, learned counsel appearing for respondent no.2.

8. Mr. Saraogi, learned counsel appearing for the petitioner would submit that there was another flat purchased by the petitioner in the same complex, which is a 2 BHK flat, and in fact this premises is the shared household within the meaning of provisions of the DV Act. He

submits that flat being Flat No.602/11 at Kopat, Thane was in fact owned by the father of petitioner, which is a 4 BHK flat, and by reason of this order, parents of the petitioner are constrained to shift to a rented premises to avoid further escalation of disputes between the parties. He would submit that there is no reasoning given by the trial Court as to why a sum of Rs.1 lakh per month is granted as interim maintenance. He submits that without prejudice to the rights and contentions of the parties, the petitioner has submitted a proposal that the respondent reside in 2 BHK flat owned by the petitioner in the same complex and that a sum of Rs. 25,000/- per month would be paid towards the maintenance.

9. *Per contra* Ms. Rajani, learned counsel appearing for respondent no. 2 would submit that the petitioner has not denied in his reply the contention of the respondent no.2 that the petitioner is owner of 3 companies. She would further submit that voluminous documents have been placed on record as also the affidavits of assets and disclosures of parties which would indicate the substantial income of the petitioner. She submits that the trial Court has, on the basis of documents on record, rightly granted a sum of Rs. 1 lakh as interim maintenance and order of injunction.

10. Considered the submissions and perused the record.

11. The trial Court has noted the submissions of parties and in the light of absence of denial in the reply to the ownership of 3 companies and that no case of unemployment is put forth by him, held that the petitioner has income source from his family business and is bound to maintain the respondent. After observing so, the trial Court has held that a sum of Rs. 5 lakh per month cannot be granted at the interim stage without evidence being led and by a cryptic order which is not supported by any reasoning, granted a sum of Rs.1 lakh towards the interim maintenance.

12. Before fixing the quantum of interim maintenance, it was incumbent upon the trial Court to take into consideration the affidavits of assets and disclosures filed by the parties. The grant of a sum of Rs. 1 lakh towards the interim maintenance by mentioning that the price of essential commodities have gone up, the need of applicant and income of opponent no.1 has been taken into consideration indicates non-application of mind. The trial Court is expected to at least arrive at a *prima facie* assessment as regards the income earned by the petitioner based on the documents which have come on record and give finding which are accompanied with proper reasoning. Perusal of the order dated 13th June 2019 would indicate that as far as the maintenance is concerned, there is no basis on which

the sum of Rs. 1 lakh has been granted.

13. As far as the order of appellate Court is concerned, the appellate Court has accepted the findings of trial Court and has failed to exercise the discretion vested in it. The appellate Court on the basis of documents could have interfered with the exercise of discretion by the trial Court if it is found to be perverse. In the present case as the documentary evidence was not taken into account, the findings of trial Court could not have been sustained.

14. As indicated above, neither the order of trial Court nor the order of appellate Court took into consideration the documents, i.e., the affidavits of assets and disclosures filed by the parties and a sum of Rs. 1 lakh has been granted as interim maintenance without any assessment of comparative incomes/ assets/ liabilities of the parties. The orders are, therefore, clearly unsustainable and are required to be quashed and set aside.

15. In view of the above, the order of Sessions Judge dated 17th February 2023 as also the order of trial Court dated 13th June 2019 are quashed and set aside. Interim application preferred by the respondent under section 23 of the DV Act is remanded to the trial Court to be decided afresh. Both parties are permitted to place

additional material on record on the next date of hearing, which this Court is informed is on 24th January 2024. The trial Court is directed to decide the matter after considering the entire material placed on record and pass a well reasoned speaking order uninfluenced by the observations made in earlier order.

16. In view of the fact that the impugned orders have been quashed and set aside, the execution proceedings stand quashed.

17. Writ petition stands allowed in above terms.

[Sharmila U. Deshmukh, J.]