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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.157 OF 2017

Priya Vaibhav Kole

...Applicant

Versus

Vaibhav Shankar Kole & Ors.

...Respondents

Ms. Prajakta Jadhav Khedekar for the Applicant.

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

CORAM : SHARMILA U. DESHMUKH, J.

DATE : JANUARY 18, 2024

P. C. :

1. None appears for the Respondents though served. On the last occasion, the Respondent was present in person and the order records that the Application will be decided finally at the stage of admission. Today none appears, as such, the matter is taken up for hearing.

2. The challenge in the Revision Application is to the Judgment of the Sessions Court dated 20th December, 2016 passed in Criminal Appeal No. 581 of 2016 filed under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (D.V. Act) whereby the Sessions Court has partly allowed the Appeal and modified the order of the Trial Court as

regards clause 3 and clause 5. By the said modification, the rent for the alternate accommodation is fixed at Rs. 5,000/- per month and the compensation of Rs. 25,000/- which was granted by the Trial Court is reduced to Rs. 10,000/-.

3. Heard Ms. Prajakta Jadhav, learned counsel for the Applicant.

4. Learned counsel for the Applicant has taken this Court through the findings of the Trial Court and the Sessions Court. She would submit that there is no basis given for reducing the compensation amount from Rs. 25,000/- to 10,000/- as the compensation has been granted by the Trial Court for the reason that Respondent No. 1 had initiated criminal proceedings as well as the civil proceedings and had failed to substantiate his case, in those proceedings driving the Application to incur litigation expenses. She would further submit that there is no finding on the basis of which the rent of the alternate accommodation is fixed at Rs. 5,000/-.

5. Considered the submissions and perused the Judgments of the Trial Court and the Appellate Court.

6. D. V. Application being 8/DV/2012 was filed by the Applicant under Section 12, 17 , 18, 19, 20 and 22 of the D.V. Act. The case of the Applicant was that the marriage was performed on 10th December, 2009 and there is one child from the said wedlock. It was contended that

subsequently, there was a dispute between the parties due to extra marital affairs of Respondent No.1. It was further pleaded that she was mentally harassed and had lodged the police complaints and Respondent No. 2 who is the brother of Respondent No. 1 did not allow her to enter into the matrimonial house. It was further pleaded that subsequently, the Respondent No. 1 filed a Petition for divorce. As regards the properties, it was contended that there were two flats being flat Nos. 3 and 8 owned by the parents of the Respondent No. 1 and 2 and the Respondents are the owners after the death of their parents. It was contended that the Applicant was staying with the Respondent No. 1 in Room No. 8. It was contended that the Respondent No. 1 is earning Rs. 40,000/- to 50,000/- per month.

7. The Application came to be contested by the Respondent however, the fact of the marriage as well as the birth of the child is not disputed as also filing of the divorce Petition before the family Court. The parties went to Trial and after evidence was led, the Trial Court by Judgment dated 17th July 2015 passed the following order.:

-: ORDER:-

1. The application is allowed.
2. The respondents No.1 is hereby prohibited from committing any act of Domestic Violence against the applicant and respondent No.2 is prohibited from aiding

or abetting such act.

3. The respondent No.1 is hereby directed to allow the applicant for residing at Room No.3 Ramkutir, Bhaskar Colony, Naupada, Thane (W). In the alternative, he is directed to secure same level of alternative accommodation for her as enjoyed by her in the shared household or pay rent for the same.

4. The respondent No.1 is directed to pay Rs.8,000/- (Rs.Eight Thousand Only) per month to the applicant towards her maintenance from the date of this order. He shall continued to pay Rs.4,000/- (Rs.Four Thousand Only) towards maintenance of Prathamesh as agreed before the Councillor.

5. The respondent No.1 is also directed to pay Rs.25,000/- (Rs. Twenty Five Thousand Only) to the applicant towards compensation.

6. Copies of the judgment/order be supplied to the parties free of costs.

7. Copy of judgment/order also be sent to the Office of Police Commissioner, Thane where Room No.3, Ramkutir, Bhaskar Colony, Naupada, Thane (W) is situated and N.M.Joshi Marg Police Station.

8. The Trial Court came to a finding on the basis of evidence that the case of domestic violence which is a sine qua non for grant of relief was made out. As regards the maintenance, a sum of Rs. 8,000/- was granted to the Applicant and Rs. 4,000/- to the child, which order has not been interfered with by the Sessions Court. The Sessions Court has modified the order as far as the payment of compensation is concerned. The Trial

Court considered that the Respondent No. 1 had initiated civil and criminal proceedings against the Applicant for which she was required to incur litigation expenses and has therefore assessed the same at Rs. 25,000/-. The Appellate Court has interfered with the exercise of discretion of grant of compensation by holding that the Court is required to consider the damages for injuries including mental torture and mainly by act of domestic violence, however, the Trial court has failed to bifurcate the same and directly jumped to the conclusion of Rs. 25,000/-. At this stage it would be relevant to refer to the statutory provisions as regards the grant of compensation under Section 22 of D. V. Act which provides that the Magistrate is empowered to pass an order directing the Respondent to pay compensation and damages for the injuries including mental torture and emotional distress caused by acts of domestic violence committed by the Respondent.

9. In the instant case, it is not disputed that the civil as well as the criminal proceeding has been initiated against the Applicant by the Respondent in which he had not succeeded. As such, the Applicant was required to incur litigation expenses. The Sessions Court lost sight of the fact that the Magistrate is empowered to pass an order directing the Respondent to pay compensation and damages for the injuries. The Trial Court has granted compensation by taking into consideration the

litigation expenses which were incurred. There was no warrant for interfering with the discretion exercised by the Trial Court especially when the Sessions Court has not given any reasoning for reducing the amount from Rs. 25,000/- to 10,000/-. The Sessions Court, in my opinion, could not have interfered with the discretion exercised by the Trial Court without any finding as to why the amount of compensation is reduced.

10. As regards the fixation of the amount of rent of Rs. 5,000/-, the Respondent No. 1 is residing in flat situated at Naupada, Thane West. The Trial Court by taking into consideration the provisions of Section 9 of the D. V. Act had rightly directed the Respondent No. 1 to secure the same level of alternate accommodation for the Applicant or the rent for the same. There cannot be any debate that the Applicant is entitled to the same status and the same living standard as that of the Respondent No.1. It was therefore incumbent upon the Respondent No. 1 to either secure the same level of alternate accommodation or to bring on record sufficient material to demonstrate the rental amount which would be paid for securing the same level of alternative accommodation. Perusal of the order of the Sessions Court indicates that there is absolutely no reasoning given as to why a rent of Rs. 5,000/- has been fixed. The order of the Sessions Court does not reflect that any material was brought on record by

Respondent No. 1 to demonstrate that for securing the same level of alternate accommodation, a rent of Rs. 5,000/- per month would be sufficient. It can be noted that the order has been passed in the year 2016, however, even in the year 2016 in a locality of Thane West, it is well known that no accommodation could have been secured at the rent of Rs. 5,000/-. The Session Court without recording any reasons and in absence of any material being on record has fixed the rent at Rs. 5,000/- which is unsustainable. The Sessions court lost sight of the fact that there is a child born of the wedlock and the Applicant as well as the child is entitled to the same living standard as that of the Respondent No. 1.

11. The findings of the Sessions Court suffers from perversity as discussed above and thus required to be quashed and set aside. Resultantly, the Application succeeds.

12. The impugned order dated 20th December, 2016 passed by the Sessions Court in Criminal Appeal No. 581 of 2016 is quashed and set aside and the Judgment of the Metropolitan Magistrate dated 17th July, 2015 stands revived.

(SHARMILA U. DESHMUKH, J.)