IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIM. REVISION APPLICATION NO. 345 OF 2022

Manish Mayank. ...Applicant.

Versus

Anila Manish Mayank and Another. ...Respondents.

Dr. Uday Warunjikar, Hemal Ganatra, Rushda Patel i/b usha Tanna & Associate for the Applicant.

Ms. Sonali Bhosale and Ms. Poorva Yadav i/b Expert Jurist LLP for the Respondent No. 1.

Mr. A. R. Metkari, APP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.
Date : May 7, 2024.

P. C. :

1. By this revision, challenge is to the order dated 24th May 2022 passed by the Appellate Court under Section 29 of the Protection of Women from Domestic Violence Act, 2005 [for short "DV Act"] dismissing the appeal filed by the Petitioner husband assailing the order of JMFC dated 8th November 2021 passed below Exhibit 5.

2. Facts of the case are that in the proceedings initiated under Section 12 of the DV Act, various reliefs under Sections 17, 18, 19, 22 and 23 of the DV Act were sought by the Respondent wife. In these proceedings, an application came to be filed below Exhibit–5 seeking interim reliefs under Section 23 of the DV Act. The contention of the Respondent wife was that the Petitioner was earning a sum of about Rs.4,17,030/- per month however no maintenance was being paid. The Respondent sought maintenance of Rs.50,000/- for herself and Rs.50,000/- to each of the children and also the payment of EMIs of two flats purchased in the joint names. The trial Court came to a *prima facie* finding of commission of domestic violence and by order dated 8th November 2021 directed the Petitioner to continue paying the EMIs of two flats jointly owned by the parties and continue to pay premiums of all the policies and NPS account opened in the names of Applicant and two children and to pay interim maintenance of Rs.25,000/- per month to the Applicant and Rs.20,000/- each to the children, from the date of filing of the application.

3. The Appellate Court confirmed the findings of the trial Court by taking into consideration the affidavit of disclosure of the Respondent wife showing that she requires Rs.1,00,000/- towards monthly expenses, Rs.60,000/- for maintaining two minor children and that her monthly income is only Rs.50,000/-. The Appellate Court noted that affidavit of the husband shows that his gross monthly expenses are Rs.3,24,029/- and net monthly income is Rs.3,27,000/- and as such income of the Petitioner husband is approximately 7 times more than the income of the Applicant.

4. Dr. Warunjikar, learned counsel appearing for the Applicant would point out to the application filed under Section 340 read with 195 of the Code of Criminal Procedure, 1973 which is pending on the file of JMFC in which the pleading is that the Respondent wife has concealed material facts and information and has given details of almost 6 bank accounts and has also stated that various transactions totaling to Rs.42,46,853/- had taken place between Respondent and one Mr. Varun Goyal between April 2021 and February 2022 and also the Respondent's Demat Account and Trading Account of HDFC and Zerodha securities.

5. In view of this application as well as the details stated in the said application filed by the Petitioner, this Court by order dated 2nd April 2024 directed the Respondent wife to file affidavit-in-reply dealing with the transactions mentioned in the application filed under Section 340 of the Code of Criminal Procedure, 1973. The affidavit-in-reply dated 16th April 2024 has been filed by the Respondent wife wherein she has accepted the bank accounts except the bank account at serial No. 6 contending that the bank account at serial Nos. 2 and 6 are one and the same. She has further admitted that the bank account at serial No.3 is the joint account with her mother and bank account at serial no 6 is the joint account with her mother and sister. In paragraph No. 4 of the affidavit-in-reply, the Respondent has not denied the transactions with Mr. Varun Goyal nor has disputed the amount of transactions and what has been stated is that the amounts are exchanged between them which was received by her by way of PF withdrawal of erstwhile employment of ICICI Bank. She has further given details of the transactions of IDFC Account of herself in which from the period from February 2021 to April 2021, there are series of transactions in the sums in lakhs of rupees. She has further admitted her Demat Account with Zerodha Securities however has stated that in respect of trading account of HDFC Securities she has no information as to which account or wherefrom the Applicant has received this information.

6. It is thus clear that all these bank accounts as well as the bank transactions and her income from the Demat Account have been suppressed by the Respondent wife while filing her affidavit of assets and liabilities. There is nothing which has been demonstrated from the affidavit of disclosure of the Respondent that all this information was divulged at the time of hearing of the application leading to grant of interim maintenance. All that is sought to be contended is that upon an application by the husband, the Respondent wife had agreed to give bank statement account. This explanation cannot be accepted for the reason that the whole purpose of filing of the affidavit of disclosure of assets and liabilities has been frustrated by suppression of material information which could have assisted the Court in arriving at the correct quantum of maintenance. The whole object of filing of an affidavit of disclosure is to ensure that the proper assessment is done by the trial Court so that neither party suffers by reason of suppression of income by other parties.

7. On reading of affidavit dated 16^{th} April 2024 it is clear that despite being aware of various bank account as well as the Demat Account, the said facts have not been disclosed by the Respondent wife and it was left to the husband to collect the information and place it for consideration. Before the trial Court, there is an application filed under Section 340 read with Section 195 of the Code of Criminal Procedure, 1973 which is pending and the trial Court will decide the same in accordance with law. However, for the purpose of grant of maintenance, the suppression of the income by the Respondent wife assumes importance. There is clear admission of transactions of lakhs of rupees between the Respondent and Mr. Varun Goyal. Further, there is suppression of the income received from the investment made with Zerodha securities. Holding 5/6 bank accounts by the Respondent wife indicates that there is sufficient funds available with the Respondent wife. At the time when the impugned order was passed all this information was not available before the trial Court and the trial Court on the basis of material on record has granted the amount of maintenance as well as directed to pay the EMIs of flats and continue to pay the premiums of policies and NPS account opened in the name of their children. It was portrayed before the trial Court that the Respondent wife is earning only Rs.50,000/- per month and as such taking into consideration the comparative incomes of parties, the trial Court has assessed the quantum of maintenance. However, from the material which is brought on record it is clear that there has been suppression of income by the Respondent wife. As the said material was not brought before the trial Court at the time of passing of the impugned order, application below Exhibit 5 is required to be restored to the file of JMFC so that necessary material can be placed on record of the trial Court for proper adjudication.

8. In the light of above, the impugned order of the Appellate Court dated 24th May 2022 as well as the order of the JMFC is quashed and set aside to the extent of grant of interim maintenance of Rs.25,000/-

to the Applicant wife, the payment of premiums of all policies and NPS account opened in the name of Applicant – wife only. Rest of the order qua two children as well for payment of EMIs and premiums and NPS as far as two children are concerned is left undisturbed at this stage but it will be open for the trial Court on consideration of comparative incomes of both the parties to modify the same also.

9. Considering that from the material it appears that the Respondent wife has sufficient income, trial Court to consider sharing of payment of EMIs as regards two flats as well as the maintenance of two children equally between the Applicant and the Respondent, though the said aspect has been left undisturbed till the adjudication of the said application.

10. The Respondent-wife is directed to file a supplementary affidavit of assets and liabilities placing all the bank accounts as well as the statement of investments with Zerodha securities or any other trading accounts which the Respondent-wife may be having, on the next date of hearing before the trial Court. The trial Court is requested to consider the application below Exhibit-5 afresh in the light of material which will be placed by the Respondent wife.

11. Revision application stands allowed in above terms.

12. Considering that the issue of maintenance is involved, the trial Court is requested to decide the application expeditiously and in any event within a period of eight weeks from the date of filing of the affidavit of assets and liabilities by the Respondent wife. The amount of maintenance already paid to the Respondent will be adjusted against the quantum which will be decided by the trial Court.

13. In view of the disposal of revision application, nothing survives for consideration in the pending interim applications and the same stand disposed of.

[Sharmila U. Deshmukh, J.]