

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

REVISION APPLICATION NO.215 OF 2021

Taswwar Nazir Mulla ...Applicant

V/s.

Wahidabano Taswar Mulla and Anr. ...Respondents

Mr. Akshay Deshmukh a/w. Mr. Sanket Kadam for the Applicant.
Ms. M. R. Tidke, APP for the Respondent-State.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 29th JANUARY, 2024.

P. C.:-

1. Revision Application has been preferred taking exception to the order dated 27th July 2021 passed by the Sessions Judge in Appeal against the order of the Judicial Magistrate First Class dated 2nd August 2018 partly allowing the application and directing the revision applicant to pay to the respondent wife a sum of Rs.8,000/- p.m. and compensation of Rs.25,000/-.

2. Heard Mr. Deshmukh, learned counsel appearing for the revision applicant.

3. Mr. Deshmukh, learned counsel appearing for applicant submits that admitted position is that the children of applicant and

respondent are residing with the applicant and he is taking care of their expenses. He would further submit that it is respondent wife who has deserted the applicant. He submits that apart from the children, his parents are also dependent upon him and as such maintenance should not have been granted.

4. I have considered the submissions and perused the record. Criminal Miscellaneous Application No.1547/2016 was filed by the respondent wife under the provisions of Protection of Women from Domestic Violence Act, 2005. It was pleaded that the applicant has mentally and physically abused the respondent wife. The instances have been cited in the Application. It was also pleaded that in the month of May 2020 the applicant started fighting with her for second marriage and has also physically assaulted her. It is pleaded that next day she was admitted in the hospital for 4 days. By the application protection order as well as the monetary relief as well as custody of the daughter was sought.

5. The parties went to trial. In the cross examination the respondent wife has admitted that there is no proof in support of the allegations made in the Application. She has also admitted that she has not adopted appropriate legal proceedings for taking custody of the children.

She has also admitted that she has instituted proceedings before the Family Court for seeking maintenance. The Trial Court by judgment and order dated 2nd August 2018 upon consideration of the evidence has held that deposition on oath establishes the case of domestic violence. The Trial Court considering the income of the revision applicant which was at that point of time Rs.53,560/- per month and the admitted position being that the respondent has no independent source of income has granted a sum of Rs.8,000/- as maintenance and a sum of Rs.25,000/- towards compensation and has also passed restraining orders against the revision applicant.

6. In the appeal preferred by both the parties the Appellate Court dismissed both the appeals and confirmed the findings of the Trial Court.

7. For the purpose of claiming relief under the provisions of Domestic Violence Act, the act of domestic violence is a *sine qua non*. In the present case, the application would indicate necessary pleadings as to the instances physical and mental abuse which was suffered by respondent wife at the hands of revision applicant. No statutory provision or judicial pronouncement has been brought to the notice of the Court that despite facing domestic violence, the respondent wife in order to be entitled to maintenance cannot reside separately from the husband.

8. The Trial Court after considering the evidence on record has held that case of domestic violence has been made out. The Trial Court considering the income of the revision applicant and the fact that there is no source of income for the respondent wife has granted a sum of Rs.8,000/-. Even though the revision applicant is having responsibility of maintenance of children, it is also his responsibility under the statutory provisions to provide maintenance to the wife. The sum of Rs.8,000/- granted by the Trial Court cannot be said to be not based on any evidence or suffering from any perversity. The Appellate Court has confirmed the findings of the Trial Court. No perversity is demonstrated in the findings of the Trial Court and the Appellate Court.

9. As such the revision application is devoid of merits and stands dismissed.

(SHARMILA U. DESHMUKH, J.)