

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

CRIMINAL REVISION APPLICATION NO.356 OF 2022

Sandhya Vinod Kadam

...Applicant

Versus

Vinod Balasaheb Kadam & Ors.

...Respondents

Mr. Ganesh Bhujbal for Applicant.

Mr. Vikas Shivarkar for Respondent Nos.1 and 2.

Mr. Kiran C. Shinde, APP for Respondent-State.

Mr. J. D. Khairnar a/w. Mr. Mufeez Ansari for Respondent No.3 (V.
P. not filed)

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 27th FEBRUARY, 2024

P. C. :

1. By this petition the challenge is to the order dated 30th July 2022 passed in Criminal Appeal No.110/2022 and the order dated 27th January 2022 passed by the Trial Court in Criminal M.A. No.2893/2017.

2. By the impugned order the Trial Court in an Application by respondent husband under Section 25 of the Protection of Women from Domestic Violence Act 2005 (DV Act) allowed the Application and held that the respondent No.1-husband is not liable to pay arrears of maintenance to applicant No.2 son as that has already been paid to

applicant No.2 by respondent No.1-husband and as such the liability of the husband towards the son was varied.

3. Mr. Bhujbal, learned counsel appearing for the applicant would submit that by way of Application below Exhibit 134 claim was made towards recovery of arrears of maintenance by way of arrest warrant in respect of the arrears of maintenance which was granted by order dated 7th October 2017. He would submit that although it is not disputed that the applicant No.2 son had attained majority, the Application for issuance of recovery warrant was in respect of arrears which were payable prior to the son attaining majority. Pointing out to the definition of monetary relief under Section 2(k) of the DV Act read with Section 20 of the DV Act, he submits that the same constitutes compensation to be paid to the aggrieved person as a result of domestic violence. He submits that despite the son attaining majority the revision applicant being the mother is entitled to recover the arrears of maintenance payable prior to his attaining majority.

4. *Per contra*, Mr. Shivarkar, learned counsel appearing for respondent would point out the findings in the Trial Court that

respondent No.1 has transferred amount in excess of the maintenance amount to the account of applicant No.2 son and that applicant No.2 has supported the said position. He would further submit that it is not disputed that applicant No.2 has received amount in excess of the due amount and as such the Trial Court has rightly varied the amount.

5. Considered the submissions and perused the record.

6. Although it is sought to be contended that what was granted by order of 7th October 2017 was monetary relief only to the aggrieved person, perusal of the order dated 7th October 2017 would indicate that the Application was made seeking interim maintenance for the revision applicant and her son and what was granted was a sum of Rs.5,000/- to applicant No.1 wife and Rs.5,000/- to applicant No.2 son. It appears that subsequently there were arrears of maintenance and as such in proceedings which reached up to this Court, this Court by order dated 13th November 2019 had directed respondent No.1 husband to pay arrears of interim maintenance within a period of three months. An Application was made below Exhibit 135 seeking recovery of arrears of maintenance by way of arrest warrant. Subsequently for alteration of the

order passed in Exhibit 135, Application was filed by respondent No.1 under Section 25 of DV Act. It is not disputed that as far as applicant No.2 son is concerned he has attained majority and also that the arrears of maintenance has been transferred to his account and in fact excess amount has been transferred. This position is not disputed by learned counsel for revision applicant.

7. Considering the fact that the son had attained the age of majority as also that the amount of arrears of maintenance was duly paid to the son who has attained majority, the Trial Court by order dated 27th January 2022 has held that respondent No.1 is not liable to pay the maintenance arrears qua the Applicant No.2- son and the same was varied from the order below Exhibit 135.

8. Considering that what was granted was maintenance to the child as well as the wife which maintenance has been duly paid by the father to the son upon attaining majority, the revision applicant mother was not entitled to maintain any Application on behalf of the son who had attained majority. It is only the son after attaining majority who could have initiated any proceedings for recovery of arrears of maintenance due

on his part. In the present case what can be found is an amount in excess of arrears of maintenance has been paid to the son. The applicant No.2 son has supported the case of the father and has admitted the receipt of the entire arrears of maintenance. The Application below Exhibit 135 was for recovery of arrears of maintenance by way of arrest warrant. Considering that the Application was for issuance of arrest warrant for recovery of arrears of maintenance, upon the maintenance being paid as regards the applicant No.2 son the order was rightly modified by the Trial Court in that respect.

9. The revision applicant is at liberty to pursue her remedies as far as recovery of arrears of maintenance due to her. However once the son has attained majority, it is the son himself who could institute any proceedings and the revision applicant is not competent to maintain any proceedings for and on behalf of the son who had attained majority.

10. In view of above, there is no merit in the Revision Application. Revision Application stands dismissed.

(SHARMILA U. DESHMUKH, J.)