



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 409 OF 2023

Rekha Sachin Chaudhary.	]	
Age 36 years, Occupation : Housewife,	]	
Presently residing at C Wing, 3 rd Floor	]	
Flat No. 305, Ajay Apt, I.B. Patel Road,	]	
Goregaon (East), Mumbai – 400 063.	]	...Applicant.

Versus

1. Sachin Nathuram Chaudhary	]	
Age 39 years, Occupation – Business,	]	
Having his place of residence at 401,	]	
Abhishek Housing Society, Road No. 03,	]	
Jayprakash Nagar, Goregaon (East),	]	
Mumbai – 400 063.	]	
	]	
2. The State of Maharashtra	]	
Through Public Prosecutor	]	
High Court (Criminal Appellate Side).	]	...Respondents.

*Mr. Prashant Aher, Mr. Abhay Singh and Ms. Vipul Patil for the applicant.
Mr. Mohammad Shine and Ms. Drishti Singh for respondent No.1.
Ms. M. R. Tidke, APP for the respondent-State.*

Coram : Sharmila U. Deshmukh, J.

Reserved on : January 31, 2024.

Pronounced on : February 14, 2024.

Judgment :

1. Rule. Rule made returnable forthwith and by consent taken up

for final hearing.

2. By this revision, the applicant takes exception to the judgment and order dated 15th July 2023 passed by the Sessions Judge and the order dated 31st October 2018 passed by the Metropolitan Magistrate rejecting the applicant's claim for interim maintenance under Section 23 of the Protection of Women from Domestic Violence Act, 2005 [for short, "the DV Act"].

3. Facts of the case are that the applicant filed application under section 12 of the DV Act seeking reliefs under Sections 18, 19, 20 and 22 and interim reliefs in terms of the prayers thereof under Section 23 of D.V. Act. The application came to be resisted by respondent no.1 by filing reply dated 3rd February 2018. Vide order dated 31st October 2018, the Metropolitan Magistrate rejected the application. As against the rejection, applicant preferred Criminal Appeal No. 394 of 2018 before the Sessions Court, which came to be allowed by the Sessions Court by its judgment and order dated 2nd June 2022 granting interim maintenance @ Rs.20,000/- per month from the date of filing of complaint. The order granting maintenance was challenged by respondent no.1 before this Court by filing Revision Application No. 423 of 2022 wherein this Court by order dated 13th April 2023 remanded the matter to the Sessions

Judge after quashing the order dated 2nd June 2022. The Sessions Judge after re-hearing the parties, dismissed the Appeal by its judgment and order dated 15th July 2023 resulting into confirming the order passed by the Metropolitan Magistrate dated 13th October 2018.

4. During the pendency of aforesaid proceedings, the applicant preferred a petition before the Family Court at Bandra, Mumbai for restitution of conjugal rights being Petition No.A-1424 of 2016 and Petition No.D-85 of 2016 for the custody of children whereas respondent no.1 filed a petition for divorce being Petition No.A-2201 of 2016. In the divorce petition filed by respondent no.1, the Applicant herein filed an application under section 24 of the Hindu Marriage Act, 1956 seeking interim maintenance which came to be allowed by the Family Court by its order dated 19th July 2019 and a sum of Rs.1 lakh per month was granted as interim maintenance. Respondent no.1 challenged the grant of interim maintenance before this Court and this Court by order dated 18th November 2021 admitted the petition and stayed further proceeding before the Family Court subject to respondent no.1 depositing a sum of Rs.15 lakh towards the arrears of maintenance in the Family Court and further direction was given to respondent no.1 to continue to

deposit an amount of Rs.50,000/- per month.

5. Heard Mr. Aher, learned counsel appearing for the applicant and Mr. Shine, learned counsel appearing for respondent no.1.

6. Mr. Aher, learned counsel appearing for the Applicant submits that the affidavit of disclosures filed by the respondent no.1 would indicate that respondent no.1 has suppressed his actual income. He submits that the Courts rejected the interim relief for the reason that the allegations and counter allegations are required to be proved by leading evidence. He submits that as regards the income of respondent no.1, the Sessions Judge held that unless the documents are proved by cogent evidence, it cannot be concluded that income of respondent no.1 is Rs.30 lakh as contended by the applicant. He submits that the Sessions Judge also took into consideration the fact that Family Court had awarded maintenance of Rs.1 lakh per month and failed to consider that by the order of this Court, respondent no.1 had been directed to pay a sum of Rs.50,000/- per month as maintenance. He submits that there is no discussion on the affidavit of disclosures filed by respondent no.1 and as such the income of respondent no.1 has not been considered. He submits that considering the standard of living and high income of respondent no.1, the applicant is entitled to the same standard of

living. He submits that the Sessions Judge failed to notice the effect of section 36 of the DV Act which provides that the provisions of DV Act are in addition to the provisions of any other law. Pointing to the affidavit of disclosures filed by respondent no.1, he submits that respondent no.1 claimed to be an employee of M/s. Chaudhary Products India whereas the said firm was his proprietorship firm. He submits that the same is evident from the fact that a sum of about Rs.1.82 crore has been given by respondent no. 1 as loan to the said firm as indicated in the disclosure affidavit of respondent no.1. He submits that the monthly income of Rs.1,12,000/- is not a correct indicator considering the properties of family which have come on record and has not been disputed. He submits that the income tax returns filed along with the affidavit of disclosures indicate that income of respondent no.1 is much more than Rs.1,12,000/- per month.

7. *Per contra*, Mr. Shine learned counsel for respondent no.1 submits that no *prima facie* case of domestic violence is made out by the applicant. Pointing to the pleadings in application filed, he submits that the pleadings do not indicate acts which would satisfy the definition of domestic violence as envisaged under section 3 of the DV Act. He further points out that the Metropolitan Magistrate

has answered the issue as regards the *prima facie* case of domestic violence against the applicant by considering the averments made in application. As regards the quantum of maintenance, he submits that this Court had considered that there is no basis on which the family Court had granted the interim maintenance of Rs.1 lakh and as such reduced the same to Rs.50,000/-. He submits that the children are residing with respondent no.1 and are dependent on him. He submits that M/s. Chaudhary Products India is not the proprietorship firm of respondent no.1 but is the proprietorship firm of his mother and he earns monthly income of Rs.1,12,000/-. Pointing to the affidavit of disclosures of applicant, he submits that the general monthly expenses of applicant is stated to be Rs.50,000/- and as such the grant of monthly maintenance of Rs.50,000/- by this Court satisfies the needs of applicant. He submits that the income tax returns would indicate that monthly income of respondent no.1 is not Rs.30 lakh, as sought to be projected. As regards the loan of Rs.1.82 crore, he submits that respondent no.1 has invested the said sum in the firm. He submits that the applicant had deserted respondent no.1 in the year 2015 and in July 2016 an application for divorce was filed and the DV complaint was filed in the year 2017.

8. In rejoinder, learned counsel appearing for the applicant submits that before the petition for divorce was filed, the petition for restitution of conjugal rights was filed by the Applicant. He submits that the act of domestic violence is *prima facie* evident from the application inasmuch as it is admitted in the replies that private detectives were hired to spy upon the Applicant. He submits that the allegations of adultery were levelled against the applicant which is *prima facie* indicative of domestic violence. He submits that the family properties would indicate that the claim of respondent no.1 as being an employee of M/s. Chaudhary Products India is incorrect. He submits that even if it is taken that there is no act of domestic violence, there is nothing to demonstrate that appropriate provision for the maintenance was made for the applicant and as such a case of economic abuse is made out.

9. Considered the submissions and perused the record.

10. The admitted position is that the Family Court had granted a sum of Rs.1 lakh per month as interim maintenance which quantum has been reduced by this Court to Rs.50,000/- per month and the petition is still pending before this Court. Before this Court, the debate between the parties is whether the Applicant is entitled to maintenance and if so, the quantum of maintenance. Admittedly, the

Applicant is not working and is surviving on the sum of Rs.50,000/- per month as directed to be paid by this Court.

11. Before proceeding further it would be appropriate to refer to the decision of the Apex Court in ***Rajnesh v. Neha [(2021) 2 SCC 324]*** wherein the Apex Court has laid down the criteria for determining the quantum of maintenance in paragraph nos. 78 to 81 which reads thus :

“78. The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependant children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.

79. In [Manish Jain v. Akanksha Jain](#) this Court held that the financial position of the parents of the applicant-wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the Court should mould the claim for maintenance based on various factors brought before it.

80. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own

maintenance, and dependant family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income *ipso facto* does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications.

81. A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home.³⁶ The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.”

12. The Apex Court has also considered the issue of overlapping of jurisdiction and has held that where successive claims for maintenance are made by the party under different statutes, the Court would consider the adjustment or set off of the amount awarded in the previous proceedings while determining whether any further amount is to be awarded in the subsequent proceedings.

13. In the light of above enunciation of law by the Apex Court, the present issue will have to be considered. The Metropolitan Magistrate as well as the Sessions Judge have rejected the claim for

interim maintenance firstly for the reason that the application does not *prima facie* make out a case of domestic violence and secondly that the allegations and counter allegations will have to be tested on the touchstone of evidence and thirdly by considering that sum of Rs.1 lakh has been granted by the family Court. It is settled that domestic violence is *sine qua non* for filing of application under the D.V. Act. The application is still to be adjudicated on the touchstone of evidence and at this stage the pleadings will have to be looked into to ascertain whether any *prima facie* case of domestic violence is made out. In the application filed by the applicant under section 12 of the DV Act, the applicant has narrated the acts of domestic violence inflicted upon her by the respondents and specific allegation has been made that respondent no.1 used to doubt her character and had kept her under continuous surveillance by hiring private detective services. Apart from the pleadings pertaining to the verbal and emotional abuse, the specific pleadings as regards casting aspersions on the character of applicant and going to the extent of hiring private detectives and keeping her under surveillance would *prima facie* satisfy the definition of domestic violence under Section 3 of the D.V. Act.

14. The Legislature has given an expansive definition to “domestic

violence” and perusal of section 3 of the DV Act would indicate that domestic violence not only includes physical abuse, sexual abuse, verbal and emotional abuse but also includes economic abuse. Reading the averments in the application under section 12 of the DV Act in light of the expansive definition of domestic violence under section 3 of the DV Act, in my view, the application could not be stated to not make out a case of domestic violence. At the stage of considering the application under section 23 of the DV Act, the only consideration is whether a *prima facie* case of domestic violence has been made out. The application for interim relief could not be rejected for the reason that the allegations and counter allegations have to be tested on the touchstone of evidence. That is required to be done in every case and interim relief cannot be rejected on the said ground. Even if the Trial Court and the Sessions Court were of the view that the allegations required evidence to be led, it should have considered that clear case of economic abuse has been made out as admittedly no provision for her maintenance was made by respondent no.1.

15. It is also pertinent to note that in the notice of divorce dated 29th April 2016 sent by respondent no.1 which is annexed to the application under section 12, the allegation of adulterous

relationship finds specific mention. The notice also makes a reference to the CDR report obtained of the alleged paramour of the applicant. It is therefore *prima facie* evident that averments in the application as regards the aspersions cast on the character of the applicant as well as her being under continuous surveillance is not without foundation. The trial Court as well as the appellate Court has failed to take into consideration the documents which were part of the record and has wrongly held that the application does not make out a case of domestic violence.

16. Pertinently, in the reply to the application under section 12, respondent no.1 has once again re-iterated the allegations that the applicant was in relationship with two persons out of which one was technician associated with the proprietorship firm of respondent no.1. Reference to the proprietorship firm is bound to be reference to M/s. Chaudhary Products India as the other firm, namely, M/s. Shree Chaudhary Trading Company, is stated to be non functional. The reply would further indicate that respondent no.1 had hired the private detectives to spy upon the applicant.

17. Now coming to the quantum of maintenance which is required to be granted, even though a sum of Rs.50,000/- per month is granted to the Applicant under the orders of this Court, the grant of

interim maintenance under the DV Act is not barred considering the provisions of Section 36 of the DV Act. What is required is the adjustment of amounts awarded under the various proceedings while determining whether any further amount is required to be awarded.

18. Coming to the comparative incomes, the applicant does not have any source of income and as such the income of Respondent No 1 will have to be considered. Both parties have filed their affidavits of disclosures. As regards the affidavit of disclosure filed by respondent no.1, he has claimed that he is employed with M/s. Chaudhary Products India as Sales Manager and his monthly income is Rs.1,12,000/-. He has stated that he is having an independent Company, namely, M/s. Shree Chaudhary Trading Company, however the same is not functional. In this context, if we consider the notice of divorce dated 29th April 2016 sent by respondent no.1 to the applicant, it is mentioned that respondent no.1 had provided the applicant with a spacious matrimonial house with 3 maid servants, sufficient economic independence, two wheeler Honda Activa, financial security, i.e., LIC policies and Fixed Deposit Receipts and PPF Account in Bank of India. It is also stated therein that the applicant is having adulterous relationship with the technician who is

associated with respondent no.1's proprietorship firm, namely, M/s. Chaudhary Products India. The contents of the notice make it evident that respondent no.1 has himself claimed to be the proprietor of M/s Chaudhary Products India.

19. Learned counsel for respondent no.1 has sought to contend that respondent no.1 is an employee of M/s Chaudhary Products India and all licenses are in the name of mother of respondent no.1. There is nothing on record to demonstrate that his mother has the capability and expertise to run the business after the death of his father, who was the proprietor of said firm. It appears that in order to suppress his actual income, respondent no.1 has shown himself as a Sales Manager with M/s. Chaudhary Products India, whereas the said firm is being run by respondent no.1 only, who is deriving the profits from the said business.

20. The purpose of filing of affidavit of disclosures is to bring on record the correct information as regards the income of parties so that on *prima facie* assessment, quantum of maintenance can be ascertained and element of guess work is reduced to a considerable extent. However, by suppressing the income and by showing himself to be an employee of M/s. Chaudhary Products India which in fact is the family business of respondent no.1, the whole purpose of filing

of affidavit of disclosure has been frustrated. The loan of Rs.1.82 crore given by respondent no.1 to M/s. Chaudhary Products India also militates against the claim of respondent no.1 that he is merely an employee of M/s. Chaudhary Products India. An employee drawing a salary of Rs.1,12,000/- per month advancing the loan of Rs.1.82 crore to the firm is not an easy fact to digest. It also needs to be noted that in the affidavit of disclosures, respondent no. 1 has shown monthly salary of Rs.1,12,000/- and additional income of rent from the shop owned by him as well interest earned from the loans advanced by him which would take the monthly income to roughly about Rs 1,70,000/-. The educational expenses of children are shown to be about Rs.1,00,000/- per month apart from the general expenses. Respondent No.1 also claims to be paying interest on loans taken by him. The income and expenses do not tally especially when compared with the Income Tax Returns for the assessment year 2020-2021, which shows the yearly income at Rs.13,21,680/-. Apart from that, in the application, the applicant has set out various properties standing in the name of respondent no.1 as well as his parents.

21. The admitted position is that the applicant does not have any source of income and the monthly maintenance on which she is

surviving is Rs.50,000/-. It is no doubt true that the children are with respondent no.1 and he has to take care of their expenses also. However, considering that there has been suppression of income by respondent no.1, there will be an element of guess work involved in assessing the income of respondent no.1. The properties of family would indicate that Respondent No.1 is a man of means and as such the applicant is also entitled to the same standard of living.

22. The Family Court has considered the admissions of respondent no.1 that to provide the basic necessities of family, he is expanding his business and traveling abroad for the said purpose. The family Court has also noted that respondent no.1 and his family own two big flats in Goregaon East, one room in Goregaon (East), one factory in Goregaon, one shop in Thakur Village, Kandivali, three shops in Vasai, 3 shops in Pali and one bungalow at native place. The family Court has also considered that the applicant had claimed respondent no.1 had luxurious cars which statement has not been disputed by respondent no.1 as respondent no.1 has claimed that it is not luxury but it is the need of business. All this indicates that respondent no.1 has suppressed his actual income while filing the affidavit of disclosures.

23. In the affidavit of disclosure filed by applicant, the general

monthly expenses required by the applicant are shown to be Rs.50,000/-. However, in my view, it is not necessary that the quantum of maintenance be restricted to the general monthly expenses which include the household expenses, medical expenses, transportation, etc. Apart from the expenses stated in the application which are the basic expenses, having regard to the standard of living of respondent no.1 which as per the findings of the Family Court include visits to foreign countries and luxurious cars at his disposal, for enabling the applicant to sustain the same standard of living, in my view, the applicant has rightly claimed maintenance of Rs.1,00,000/- per month. It needs to be noted that respondent no.1 has not made any provision for the alternate accommodation of applicant and she is residing with her parents.

24. Having regard to the discussion above, the applicant is entitled to the monthly maintenance of Rs.1,00,000/ as and by way of interim relief. As the applicant is in receipt of maintenance of Rs.50,000/- per month under the orders of this Court, respondent no.1 is directed to pay sum of Rs.50,000/- per month to the applicant as and by way of interim maintenance from the date of filing of application under Section 12 of DV Act in addition to the maintenance of Rs.50,000/- per month already directed to be paid to the applicant by

this Court in the petition challenging grant of maintenance by Family Court.

25. Having regard to the discussion above, revision application succeeds. The impugned orders dated 15th July 2023 and 31st October 2018 are hereby quashed and set aside. Respondent no.1 is directed to pay a sum of Rs.50,000/- per month towards the interim maintenance to the applicant from the date of application filed under section 12 of the DV Act in addition to the maintenance of Rs.50,000/- per month being paid under the orders of this Court. The arrears to be cleared within a period of six months from today. Rule is made absolute in above terms.

[Sharmila U. Deshmukh, J.]

26. At this stage, request is made for stay of the order for a period of four weeks. Execution of the order is stayed for the period of four weeks.

[Sharmila U. Deshmukh, J.]