

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

**CRIMINAL REVISION APPLICATION NO.539 OF 2019**

|                                         |                |
|-----------------------------------------|----------------|
| Sonu Deepak Shinde Alias Sonu Balu Mane | ...Applicant   |
| <b><i>Versus</i></b>                    |                |
| Deepak Gangadhar Shinde and Ors.        | ...Respondents |

Mr. Rajeshkumar Salpuram a/w. Mr. Vijay B. Gaikwad for the Applicant .

Mr. Pranav Avhad a/w. Ms. Darshna Naval for the Respondents.

**CORAM : SHARMILA U. DESHMUKH, J.  
DATE : 26<sup>th</sup> MARCH, 2024.**

**P. C. :**

1. By this petition the challenge is to the order dated 19/12/2016 passed by the Appellate Court in Appeal filed under Section 29 of the Protection of Women from Domestic Violence Act 2005 (DV Act) quashing and setting aside the order of the Judicial Magistrate passed in Application under Section 23 of DV Act granting interim maintenance of Rs.5,000/- to the applicant from the date of the Application dated 18<sup>th</sup> June 2013 till the decision of the main proceedings.

2. Interim Application came to be filed under Section 23 of DV Act in the Application under Section 12 of the DV Act contending that the respondent-husband is an Agricultural officer and having salary of

more than Rs.50,000/-. It was contended that applicant-wife has no source of income and she has prayed for maintenance of Rs. 10,000/- for herself and Rs.5,000/- per month each to her son and daughter.

3. The Trial Court allowed the Application and directed maintenance of Rs.5,000/- to the applicant from the date of the Application. The Trial Court considered that the applicant has not produced any documentary evidence such as salary statement etc to prove the income of the respondent- husband. The Trial Court considered that being in government service the respondent was likely to have salary of Rs.25,000/- to Rs.30,000/- per month and considering the income, the Trial Court held that the respondent is capable of providing maintenance of Rs.4,000/- to the applicant and Rs.3,000/- p.m. each for his children totaling Rs.10,000/- after taking into consideration the interim maintenance of Rs.5,000/- which was granted by the Family Court, the Trial Court granted a sum of Rs.5,000/- to the applicant.

4. As against this, appeal was filed by respondent-husband. The Appellate Court allowed the appeal and set aside the order of the Trial Court.

5. Heard Mr. Nitish Banka, learned counsel for the Applicant,

Ms. Shilpa Talhar, learned APP for the Respondent-State and Mr. Virendra Pethe, learned counsel for Respondent No.2.

6. Learned counsel for the applicant would submit that the admitted position is that applicant does not have any source of income and the children aged about 15-16 years are studying in school for which expenses are required to be incurred by the wife. He would further submit that the fact of respondent-husband working in government office is not disputed and therefore the Trial Court had rightly granted maintenance. He submits that the only reason why the Appellate Court has rejected the Application is that different proceedings have been initiated by the applicant-wife.

7. *Per contra*, learned counsel for the respondent would submit that in execution of the decree for restitution of conjugal rights there is attachment of 2/3rd of his salary and hence since March 2023 the respondent is paying almost Rs.20,000/- to the applicant. She would further submit that the Appellate Court has considered that the Family Court had granted maintenance of Rs.4,500/- and that various proceedings have been initiated by the applicant-wife against respondent.

8. Considered the submissions and perused the record.

9. The position is not disputed that the applicant-wife is unemployed and have two school going children and she has to incur expenses on apart from their educational expenses on their day to day sustenance as also her sustenance. In the Application before the Family Court, the Family Court had granted meagre maintenance of Rs.4,500/- per month to the applicant and the two children. Subsequently, it appears that Application under Section 12 of the DV Act was filed by the applicant-wife in which there was a claim for maintenance under Section 23. Section 36 of DV Act provides that the provisions of DV Act are in addition to the provisions of any other law and merely because the Application for maintenance was filed in the proceedings for restitution of conjugal rights cannot *ipso facto* dis-entitle the applicant for grant of maintenance under DV proceedings. The decision of the Apex Court in the case of ***Rajnesh vs. Neha*** , 2021(2) SCC 324 has dealt exclusively with the said issue as regards the overlapping jurisdiction as also the manner in which interim maintenance has to be granted by taking into consideration the maintenance which has been granted in other proceedings. The Appellate Court in fact ought to have appreciated that the Trial Court has followed the mandate of the Apex Court in the case of

***Rajnish Vs. Neha (supra)*** and after taking into consideration the amount which has been granted by the Family Court had granted a sum of Rs.5,000/- to the applicant. The Appellate Court could not have refused the grant of maintenance to the wife on the ground that she is initiating different proceedings. The applicant-wife is perfectly justified in seeking whatever reliefs are available to her in law and cannot be faulted for invoking the said remedies. The Appellate Court has not even considered the income of the respondent-husband which before this Court is admitted to be in the sum of Rs.50,000/-.

10. Considering the needs of the educational expenses of the children as well as their maintenance as well as that of the wife, the sum of Rs.5,000/- could not be considered to be excessive so as to warrant interference by the Appellate Court. It was incumbent upon the Appellate Court to consider the income of the respondent-husband and after considering the dependents, if any, other expenses as well as expenses of the applicant-wife and the children assess the amount which is required to be granted. The Appellate Court has quashed and set aside the order of the Trial Court without any legally sustainable reasons. The submission that presently in execution of restitution of conjugal rights sum of Rs.20,000/- has been paid cannot enure to the benefit of respondent-

husband particularly when the same is for non compliance of the restitution of conjugal rights. Further the said amount has been paid from March 2023 whereas the applicant-wife is entitled to maintenance from the date of the Application i.e. from the year 2013.

11. Having regard to the discussion above, the impugned order dated 19<sup>th</sup> December 2016 being legally unsustainable is hereby quashed and set aside. Consequently, the order of the Trial Court dated 9<sup>th</sup> January 2014 stands revived. Revision Application is accordingly disposed of.

**(SHARMILA U. DESHMUKH, J. )**