



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIM. REVISION APPLICATION NO. 418 OF 2023

Shaheen Mansoori.

...Applicant.

Versus

Ashafaque Mansoori.

...Respondent.

With

CRIM. REVISION APPLICATION NO. 419 OF 2023

Shaheen Mansoori.

...Applicant.

Versus

Ashafaque Mansoori.

...Respondent.

With

CRIM. REVISION APPLICATION (ST.) NO. 1251 OF 2024

Ashafaque Mansoori.

...Applicant.

Versus

Shaheen Mansoori and Another.

...Respondents.

Mr. Bhavin Gada i/b Ms. Tariq Khan for the applicant in Revn. 418 of 2023 and 419 of 2023 and for the respondent in Revn. 1251 of 2024.

Mr. Sachindra B. Shetye for the respondent in Revn. 418 of 2023 and 419 of 2023 and for the appellant in Revn. 1251 of 2024.

Coram : Sharmila U. Deshmukh, J.

Date : January 16, 2024.

P. C. :

1. Criminal Revision Application (st.) No. 1251 of 2024 is not on board. The same is taken on board as the said revision takes exception to the same order as other two revision applications.

2. The revision applications have been preferred challenging the order dated 31st July 2023 passed by the learned Sessions Judge in appeals filed by both the parties against the order of trial Court dated 6th February 2019 directing the respondent-husband to provide for residential arrangement and also monetary relief in the sum of ₹40,000 per month to the applicant with effect from the date of filing of the application. For the sake of convenience, the parties are referred to by their status before the trial Court.

3. The learned Sessions Judge framed following issues for determination and answered the same as under :

POINTS	FINDINGS
1. Whether the applicant/complainant is entitled for such interim maintenance as decided by the Ld. Trial Court and whether it necessitates enhancement ?	Partly affirmative.
2. Whether the order/ judgment of the Ld. Trial Court requires indulgence at the hands of this Court ?	In the affirmative.

4. Learned Sessions Judge held that under the provisions of Section 19 of the Protection of Women from Domestic Violence Act, 2005 [for short "the DV Act"], the applicant-wife is entitled to the same level of alternate accommodation as is enjoyed by her in the

shared household. Learned Sessions Judge considered that the decision of ***Rajnish Vs. Neha*** was not delivered at the time when the trial Court decided the application for interim maintenance and that the guidelines laid down by the Apex Court in ***Rajnish Vs. Neha*** would assist in ascertaining the income of parties. The learned Sessions Judge did not interfere with the observation of trial Court regarding the *prima facie* case of the domestic violence being made out. In paragraph 15, the Sessions Judge categorically held that outstanding interim maintenance is not set aside at this juncture and on the contrary if at all post deciding the application for interim maintenance afresh by the trial Court, such monthly interim maintenance is held less, the excess would be adjusted accordingly. In paragraph 16 the Sessions Judge held that since the DV Act in itself is a beneficial legislation, the wife and child cannot be left at the mercy of respondent-husband and directed respondent-husband to comply with the directions of the trial Court and if such sum post compliance is found to be in excess it can be adjusted accordingly post decision on the application for interim maintenance by the trial Court.

5. Having observed thus, the learned Sessions Judge passed the following order :

1] *Criminal Appeal No. 5 of 2023 is hereby allowed and*

the order of the Ld. Trial Court dated 06.02.2019 in CC.No. 61/DV/2015 by the Ld. Metropolitan Magistrate, 12th Court, Bandra, Mumbai, stands set aside and matter is hereby remanded for considering the application for interim maintenance afresh by the Learned Trial Court.

2] The Ld. Trial Court shall post affording opportunity to either party of filing an affidavit of assets and liabilities and such other relevant material would adjudicate and decide the application for interim maintenance within a period of two months from the date of receipt of this order.

3] Parties shall submit the affidavit of assets and liabilities along with such relevant material by the next date before the Ld. Trial Court and either party shall also submit written notes of argument post filing of affidavit of assets and liabilities. No party shall seek unnecessary adjournment except at the indulgence of the Ld. Trial Court."

6. Heard Mr. Bhavin Gada, learned counsel appearing for the applicant in Criminal Revision Application Nos. 418 of 2023 and 419 of 2023 and for the respondent in Criminal Revision Application (st.) No. 1251 of 2024 and Mr. Sachindra Shetye, learned counsel appearing for the respondent in Criminal Revision Application Nos. 418 of 2023 and 419 of 2023 and for the applicant in Criminal Revision Application (st.) No. 1251 of 2024.

7. Learned counsel appearing for the applicant-wife submits that the observations of the Sessions Judge did not disturb the finding of the trial Court as regards the payment of monthly maintenance, which

was directed by the trial Court at the rate of ₹40,000 per month. He would submit that on the contrary the Sessions Judge in the findings has specifically recorded a direction to the respondent-husband to comply with the directions of trial Court. He submits that having observed thus, in the operative part of the order the learned Sessions Judge has allowed the appeal filed by the respondent-husband and remanded the matter to the trial Court for considering the application for maintenance afresh. He submits that the findings and the operative part of the order are not in consonance with each other and, as such, the operative part of the order is required to be modified in tune with the observations made by the appellate Court. He would further submit that as regards the alternate accommodation, the parties after marriage had admittedly resided in area like Bandra and Khar and the child, who is now 9 years old is also going to school in Khar. He submits that the alternate accommodation was offered at Mira Road and as per the provisions of Section 19 of the DV Act, the residence has to be provided in the locality at Khar and not at Mira Road. He further points out that as of today there are arrears of about Rs.22,00,000 and NBWs issued by the trial Court against the respondent-husband have been cancelled in view of the operative part of the order of Sessions Judge. He further submits that despite giving an undertaking before the Family Court that the educational

expenses of child would be paid, no payments have been made since last 2 years. He further submits that by an application dated 7th December 2022 the respondent-husband had stated that he would try and remit an amount of ₹35,000/- per month to the applicant-wife however there has been no compliance of the said undertaking.

8. *Per contra* learned counsel appearing for the respondent-husband would submit that the case of domestic violence which is *sine qua non* for grant of interim relief is recorded by the trial Court on the basis of contention of the applicant-wife and as such cannot be said to be the finding of trial Court. He further submits that the order of trial Court as regards the payment of monthly maintenance was not on the basis of any material produced by either party as the trial Court itself observed that the issue of maintenance can be decided only after leading evidence. He further submits that the respondent-husband is not having financial capability to pay the sum of ₹40,000 per month towards the maintenance and that the matter is required to be decided afresh.

9. Considered the submissions and perused the record.

10. The trial Court on the basis of allegations made in the

application under section 12 of the DV Act has *prima facie* held that the allegations constitute a case of domestic violence. At the time of grant of interim relief under section 23 of DV Act it is not necessary that a categorical finding has to be given as regards domestic violence. What is required to be seen is the case of the applicant as regards domestic violence and to find out as to whether the same *prima facie* constitutes act of domestic violence. It is well settled that economic abuse also constitutes an aspect of domestic violence and there is no material produced on record to demonstrate that after the parties separated, the respondent-husband had made any provision for the maintenance of applicant-wife and child. It is an admitted position that the applicant-wife is residing with her father and even the provision for residence has not been made by the respondent husband.

11. The factual position would in fact demonstrate *prima facie* case of economic abuse by the respondent-husband. The trial Court on the assessment of income has computed a sum of ₹40,000/- as and by way of interim maintenance. Trial Court considered that the wife has claimed maintenance at the rate of Rs.1,75,000/- for herself and child and on the other hand the respondent-husband has mentioned that he is earning ₹25,000 per month. However, there is no document

produced on record to support his case by the respondent-husband. Though the decision in the case of ***Rajnish vs Neha*** was not delivered at that time, it was necessary for the respondent husband as well as the applicant wife to produce documents showing the income of parties. The trial Court therefore has considered the financial capabilities on the basis that the respondent husband had rented the premises in area like Khar and Bandra where the rental was definitely more than ₹20,000/- which has been pointed out by the applicant-wife. The trial Court considered the lifestyle of the parties and has directed an interim maintenance of ₹40,000/- per month.

12. It is well settled that at the stage of grant of interim maintenance some guesswork is required to be done by the trial Court especially when there is no cogent material brought on record. The ascertainment of permanent maintenance will be done after evidence has been led by both the parties. The admitted position as on today is that there is a child aged 9 years studying in school at Khar and his educational expenses as well as day to day maintenance is required to be met. Even if it is considered that there is some income earned by the applicant-wife the same will not disentitle her to claim maintenance if it is shown that respondent husband is earning more than the applicant-wife. In an application which is tendered across the

bar the respondent-husband has not only agreed to pay school fees and educational expenses of the child but also agreed to pay and remit an amount of ₹35,000/- per month to the applicant wife. The pleadings in the application would sufficiently demonstrate that he is in a position to make a payment of ₹40,000/- per month as directed by the trial Court

13. As regards the order of learned Sessions Judge the answer on issue number 1 is indicative of the fact that the Sessions Judge has sustained the finding of trial Court as regards the payment of ₹40,000/- per month as interim maintenance and only as regards the enhancement or reduction, as the affidavits of assets and disclosure was not filed, the matter has been remanded to the trial Court for consideration afresh. The observations in paragraphs 15 and 16 make it more than evident that pending the hearing of interim application by the trial Court, the order of maintenance at the rate of ₹40,000 per month has been sustained by the Sessions Judge.

14. Considering that the matter has to be considered afresh by the trial Court, it cannot be said that till the matter is decided by the trial Court the applicant-wife as well as the minor child should be without any maintenance. It is well known that hearing of the interim maintenance application would take some time as the parties to the

litigation may file applications and delay litigation. Learned Sessions Judge has rightly observed that if the interim maintenance granted is found to be in excess, the same can be adjusted accordingly post decision of the application by the trial Court.

15. It cannot be denied that even if the wife is held to be not entitled to maintenance, the child will certainly be entitled to maintenance and as such whatever amount is paid by way of interim maintenance can very well be adjusted against the maintenance which will be determined by the trial Court after considering the affidavits of assets and disclosures of the parties.

16. In view of the above operative part of the order of the Sessions Judge is modified to read as under :

1] The order dated 6th February 2019 in CC.No. 61/DV/2015 by the Ld. Metropolitan Magistrate, 12th Court, Bandra, Mumbai, is set aside and matter is remanded for consideration of the application for interim maintenance afresh by the Trial Court.

2] Pending the adjudication of interim maintenance application by the Trial Court, respondent–husband is directed to comply with the order of trial Court dated 6th February 2019 as regards the payment of maintenance @ Rs.40,000/- per month to the applicant–wife with effect from the date of filing of application for interim

maintenance.

3] Trial Court shall post affording opportunity to either party of filing an affidavit of assets and liabilities and such other relevant material would adjudicate and decide the application for interim maintenance within a period of two months from the date of receipt of copy of this order.

4] Parties shall submit the affidavit of assets and liabilities along with such relevant material by the next date before the Trial Court and either party shall also submit written notes of argument post filing of affidavit of assets and liabilities. No party shall seek unnecessary adjournment except at the indulgence of Trial Court.

17. All revision applications stand disposed of in the above terms.

18. In view of the disposal of above revision applications, interim applications taken out in these revisions do not survive and the same stand disposed of. Needless to clarify that the trial Court to decide the matter afresh, uninfluenced by the observations made herein.

[Sharmila U. Deshmukh, J.]