

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.417 OF 2023

Vikas Shivmurti Sharma

...Applicant.

Versus

Bittu Vikas Sharma & Anr.

...Respondents.

Mr. Tiwari Vikas Akhilesh for the Applicant.

Mr. Pramod Pandey a/w. Mr. M. B. Shah for respondent No.1.

Ms. G. P. Mulekar, APP for respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : 3rd April, 2024.

P. C. :

1. Heard.

2. By this petition challenge is to the order dated 20th October 2023 passed by the Additional Sessions Judge, Pune under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (D. V. Act) allowing the appeal partly and modifying the order of rent from Rs.12,000/- to Rs.5,500/- per month and confirming the order of maintenance of Rs.8,000/- per month.

3. The facts of the case are that in an Application filed by Respondent No.1 under D. V. Act, interim reliefs by way of protection orders under Section 18, sum of Rs.15,000/- per month under Section 19 towards rent and interim maintenance of Rs.20,000/- was sought. The Trial Court *vide* order dated 10th July 2023 granted protection order and directed payment of interim maintenance of Rs.8,000/- from the date of filing of this Application and Rs.12,000/- towards rent. As against this, an Appeal came to be filed by the Revision Applicant being Criminal Appeal No.141/2023. The Appellate Court partly allowed the Appeal and confirmed the maintenance reducing only the amount of rent from Rs.12,000/- to Rs. 5,500/- per month.

4. Learned counsel for Applicant submits that the Applicant is not even a graduate and has cleared his 12th standard. He would further point out the letter of appointment at page 13 of one Mourya Pesticide appointing the Applicant on a monthly salary of Rs.6,000/-. He would further submit that the respondent wife is working which is evident from the document at Exhibit 14 and 15. He submits that the Appellate Court has

disbelieved the said evidence and despite the income of Rs.6,000/- had granted sum of Rs.5,500/- towards rent and Rs.8,000/- towards maintenance.

5. *Per contra*, learned counsel for respondent-wife denies the documents at page 14 and 15. He points out that document at 14 stated to be certificate issued by the school is not issued on the letter-head of the school. He would further submit that the name of the respondent-wife is *spelt* incorrectly as her father's name is Lalchand and not Halchand. He denies the photographs annexed at page 15 and 16 of petition and claims that they are morphed. He further submits that the Appellate Court has considered that the Applicant is an able bodied person and considering the income prescribed under the Minimum Wages Act, income of Rs.6,000/- as stated by the Applicant is disbelieved.

6. Considered the submissions and perused the record.

7. In accordance with the mandate of the Apex Court in

the case of ***Rajnesh vs. Neha, (2021) 2 SCC 324*** the Affidavit of Assets and Liabilities have been filed by both the parties. Perusal of the Affidavit of Assets and Liabilities of the respondent-wife would indicate that her educational qualification is M. Com. and that she has stated that she is residing in her parental home along with her family in rental house. She has further stated that she is unemployed. As against this the Affidavit of Assets and Liabilities filed by the Applicant shows his educational qualification as BCS and it is stated that he is unemployed. Both parties thus claim to be unemployed. The contention of Applicant is that subsequently he has found a job and his monthly income is Rs.6,000/-. In support of the Affidavit of Assets and Liabilities, the bank statement of the Applicant has been produced for the period from April 2021 to 31st March 2022. It appears that there are certain amounts credited for the period from 4th April 2021 till 4th July 2021 and thereafter meagre amounts of Rs.500-Rs.1000/- are shown to be deposited. On 23rd October 2021 there is credit of Rs.10,000/- on 28th December, 2021 credit of Rs.25,650/-, on 29th December, 2021 credit of Rs.10,000/-, on 1st February, 2022 credit of Rs.15,000/-

and on 5th March, 2022 credit of Rs.12,000/-. Apart from these credits which are upwards of Rs.10,000/- the rest of the amounts credited are of meagre amounts.

8. Now if the bank statement of Respondent-wife is perused for the same period i.e. April 2021 onwards in April 2021, May 2021, June 2021 and July 2021 there are regular credits upwards of Rs.20,000/- The bank statements also show debits towards jewellery purchased. There are regular credits upwards of Rs.5,000/-.

9. It is clear from the Affidavit of Assets and Liabilities and the accompanying bank statements that neither party has disclosed their true income. As far as the petitioner-husband is concerned, he claims to be earning a monthly salary of Rs.6,000/- however the document at page 13 would indicate that the salary will be paid by cheque whereas perusal of the bank statement which has been filed does not indicate any amount of Rs.6,000/- credited from Mourya Pesticides. Similarly as far as the respondent-wife is concerned, there are regular credits in her

bank account for which there is no explanation given at least nothing is demonstrated before this Court. The submission is consistent that she is not employed and was never employed. If that was the submission, it was expected of respondent-wife to explain the credits in her bank account. Although affidavit in reply is filed nothing is pointed out to so as to explain the credit entries in her account. It is thus apparent that both the parties have suppressed their income from the Court. The whole purpose of filing of Affidavit of Assets and Liabilities before the Court is to reduce the element of guess work in the grant of interim maintenance. The purpose has been wholly frustrated in the present case. Both parties have suppressed their income and both claim to be unemployed. Even if that be so as held by the Appellate Court in ***Rajnish vs. Neha*** (*supra*) in case the husband is an able bodied person, he is liable to maintain his wife. Considering the bank statement which has come on record of the respondent, it appears that certain amounts had been credited to his account and therefore it cannot be said that he is unemployed and has no source of income. At the same time, while assessing the quantum of maintenance, the comparative

income of both the parties have to be seen and balance is to be maintained to ensure the amount of maintenance granted is commensurate with the income of husband. It is only upon the comparative assessment of the income of the parties that the Trial Court is required to arrive at the quantum of maintenance.

10. Considering the material which has come on record, it can be said that amount of Rs.5,500/- towards rent and amount of Rs.8,000/- towards maintenance is clearly on higher side. In the facts of the present case where both parties have suppressed their income from the Court, evidence will have to be led in order to substantiate their respective income. The Appellate Court has disbelieved the income of Rs.6,000/- by taking into consideration that fictitious income based on the amount stipulated under the Minimum Wages Act. It is well known that not every employer would be paying salaries as per the minimum assured under the legislation and the same cannot form the basis for grant of maintenance. There is no basis for disregarding income of Rs.6,000/- and there is no basis for granting maintenance of Rs.8,000/-. The orders of the Trial Court as well as the Appellate

Court have considered a hypothetical situation that if respondent No.1-husband is doing labour work he would be earning Rs.600/- to Rs.700/- per day. There is no discussion on the Affidavit of Assets and Liabilities which is filed by both the parties. It is admitted by the parties that the respective bank accounts were produced before the Trial Court. The Court could have on the basis of available material arrived at a fair assessment of funds being available to both parties and thereafter assessed the quantum of maintenance. No such exercise is demonstrated from the orders of Trial Court and Appellate Court. The Trial Court has instead taken an imaginary figure of Rs.18,000/- to Rs.21,000/- per month and has granted interim maintenance of Rs.8,000/- Further the Appellate Court has by a cryptic order disbelieved the income of the Applicant-husband in view of minimum income prescribed in Minimum Wages Act.

11. Considering the above, the order of the Appellate Court granting a sum of Rs.5,500/- as rent and Rs.8,000/- towards maintenance is legally unsustainable. In the present case it is clear that evidence is required to be led before it can be said that

the respondent-wife is without any source of income or that the husband has sufficient source of income. Perusal of the bank statements would indicate that there are certain amounts which are credited to Respondent bank account and as such it cannot be said that she is totally without any funds for sustenance. In the facts of the present case, the application stands allowed. Order of the Appellate Court dated 20th October 2023 is hereby quashed and set aside.

[Sharmila U. Deshmukh, J.]