IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION NO.140 OF 2024
WITH
INTERIM APPLICATION NO. 6155 OF 2024

Pankaj Rajendra Kapoor & Ors. ...Applicants.
Versus
The State & Anr. ...Respondents.

Adv. Santosh Adukia for the Applicants.
Adv. Shilpa P. Kapoor Repondent in person.
Adv. Geeta Mulekar, APP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.
Reserved on : May 7, 2024.
Pronounced on : May 10, 2024.

P. C. :

1. The revisonal jurisdiction of this Court has been invoked to challenge the order dated 19th October 2023 passed by the Appellate Court in Criminal Appeal No. 533 of 2023 dismissing the Appeal filed by the Revisional Applicants thereby confirming the order dated 13th July, 2023 passed by the Metropolitan Magistrate in CC No. 5100163/ DV/2023 granting interim monthly maintenance of Rs. 25,000/- to the Respondent wife and Rs. 15000/- to the minor daughter Neva Kapoor from date of filing of the Application.

2. The facts of the case are that DV. Application No.163 of 2022 was filed by the Respondent wife under Section 12 of Protection of Women from Domestic Violence Act, 2005 (DV Act) claiming various reliefs. In the DV proceedings, an Application came to be filed by the Respondent wife under Section 23 of the D.V. Act seeking maintenance of Rs.30,000/- for herself and Rs.25,000/- per month for daughter Neva. It was pleaded that on 15th May, 2022, the Respondent was assaulted by the Applicants and driven out of the matrimonial house for which NC complaint was registered with local police station. It was contended that even prior thereto there are various N.C's. lodged against the Revision Applicants by the Respondent as well as by daughter. It was pleaded that the Respondent wife is a housewife and has no source of income and is totally dependent upon her parents. It was pleaded that the educational expenses of the child was borne by the Respondent's parents. As regards the assets of the Revision Applicants, it was pleaded that they are having residential flat, factory at Bombay Talkies Compound, Malad and also shop at Malad which are ownership properties. The Revision Applicants are in the business of molding plastic goods and materials and the Revision Applicant No. 1 earns about approximately Rs.2,00,000/-.

3. The Application for interim maintenance came to be resisted by the Revision Applicants denying the contentions as regards the acts of domestic violence. It was pleaded that in fact the Respondent wife is earning about Rs.35,000/- per month and copies of income tax returns of the Respondent wife is annexed from the year 2012 till 2023. It was contended that only for the first time the fees of the elder daughter was paid by the Respondent wife and the daughter was sent to a costly school by the Respondent wife though the Revision Applicant No.1 could not afford the fees. However, the educational expenses of the younger daughter are being paid by the Revision Applicants. It was contended that all the assets are owned by the parents of the Revision Applicant No. 1 and the total income of the Applicant No. 1 husband is Rs. 38,100/- per month out of which he is paying the educational expenses of the younger daughter, mediclaim and LIC policy premiums, maintenance of the flat, medical expenses and petrol charges which aggregate to about Rs.22,000/- per month. Salary certificate of Revision Applicant No.1 is annexed issued by one Radiance Alloy and Electricals Pvt. Ltd. certifying that the Revision Applicant No. 1 is working with their organization since October, 2020 and drawing a salary of Rs.30,000/- per month from April 2022 till date.

4. The parties filed their respective Affidavits of Disclosure of assets and liabilities. The Trial Court by order dated 30th July, 2023 came to prima facie finding of commission of acts of domestic violence. The Trial Court considered the submission of Respondent about the income of the husband and noted that in the Affidavit of Disclosure, the Revision Applicant No. 1 has not mentioned his income. From the copies of the income tax returns the trial Court inferred that the income of the Revisional Applicant husband is approximately Rs.6,00,000/- and granted monthly maintenance of Rs.25,000/- to the respondent wife and Rs.15,000/- to the daughter.

5. In Appeal filed by the Revision Applicants the same findings were noted by the Appellate Court and the appeal came to be dismissed.

6. Head Mr. Adukia, learned counsel for the Applicant and Ms. Shilpa Kapoor Respondent wife present in person.

7. Learned counsel for the Applicant would submit that the conduct of the Respondent wife can be seen from the fact that different stands have been adopted by the Respondent wife in her D.V. Application, Family Court proceeding and in the Application for maintenance under Section 125 of Cr.P.C. He submits that in certain proceedings, the Respondent wife has claimed that for about 17 years after marriage the relationship was cordial between the parties, whereas for the purpose of D.V. Application false allegations of domestic violence are made.

8. He submits that as per the salary certificate produced on record, it is evident that the salary of the Applicant No. 1 husband is Rs. 30000/- per month whereas pointing out to the income tax returns of the wife annexed at page Nos.121 to 154, he submits that for the period 2019-2020 her income tax returns shows gross income of Rs.4,18,754/-. He submits that out of his income the Applicant No. 1 is meeting the educational expenses of the younger daughter and as far as the educational expenses of the elder daughter is concerned considering the salary of Applicant No. 1 husband, the Applicant No. 1 husband cannot afford the costly school fees in which the Respondent wife has unilaterally secured admission. He submits that the trial Court and the Appellate Court has not considered the income tax returns and has erroneously come to a finding that the income of Rs. 6,00,000/-.

9. The Respondent wife who appears in person would point out her affidavit-in-reply along with counterclaim seeking enhancement of the maintenance granted as well as rent. She would further point out the photographs annexed to the reply and would submit that the photographs are taken during foreign trips taken by the family and show the standard of living of the parties. Pointing out her own bank statement as well as the complaints filed by her with the income tax authorities claiming that forged pan card is being used by the husband in her name, she submits that her Income Tax Returns are forged and she has no employment. She would further point out from her income tax returns that the income tax returns shows the number of her forged pan card about which she has already lodged a complaint and that the mobile number as well as the email id on the income tax returns is that of the husband. She would further submit that the Applicant No.1 husband belongs to a business family and foreign trips were undertaken by them along with their children which is not possible if the monthly income of the husband is Rs.30000/-.

10. There is no written rejoinder to the reply. However, learned counsel for the Applicant No.1 husband points out the statement of bank account of Respondent wife annexed at page 62 to her reply which shows that in September, 2015 sum of Rs.5,00,000/- was transferred from the bank account of the wife to her father. He submits that this is sufficient to demonstrate that the Respondent wife has source of income.

11. Considered the submissions and perused the record.

12. There are no submissions advanced to dispute the finding about the prima facie existence of domestic violence which is *sine-qua-non* for grant of interim reliefs except to state that varying stands are adopted by the Respondent wife in different proceedings. For purpose of grant of interim maintenance, comparative incomes of the parties, their expenses, dependents are some of the factors which are required to be taken into consideration. The case of Respondent wife is that she has no source of income whereas the Applicant No. 1 husband and his family are engaged in business and the Applicant No. 1 husband is earning a sum of Rs.2,00,000/- per month.

13. As mandated by the Apex Court in the case of ***Rajnesh vs. Neha [AIR 2021 SUPREME COURT 569]***, the affidavit of disclosure of assets and liabilities have been filed by both husband and wife. In the disclosure Affidavit of the Respondent wife she has stated that she is a housewife and has no source of income. The Revision Applicant No.1 husband has only given the name of his employer but has left the monthly income column blank. He has also left the monthly expenses column blank whereas, the Respondent wife has given the details of her expenses.

14. The Trial Court and the Appellate Court have therefore rightly noted the said fact and from the copies of his income tax returns inferred that he is earning approximately Rs.6,00,000/-. Although, it is disputed by the learned counsel for the Applicant that the income tax returns do not show an annual income of Rs.6,00,000/-, the Trial Court has considered the approximate income of the Applicant No.1 in the absence of any details given in the Disclosure Affidavit. From perusal of the reply of the Applicant No. 1 to the interim application, it does not appear that the salary certificate was annexed as exhibit to the application. There is no clarity as to whether the salary certificate formed part of the record before the Trial Court. This Court has however perused the salary certificate which certifies the salary at Rs.30,000/- per month. In the reply which was filed in August 2022 by the Applicant, it was contended that the salary of the Revision Applicant No.1 is Rs.38,100/- per month whereas, in the salary certificate, it is stated that the salary is Rs.30000/- per month from April 2022. The discrepancy of Rs.8,100/- has not been explained. The Income Tax Returns shows varying figures of total income of Rs. 4,79,110/- for assessment year 2020-2021, Rs 5,14,500 for assessment year 2021-22. As noted herein above, in the Affidavit of disclosure the income column has been left blank and the bank statement annexed to present Petition shows transfers of Rs.1,00,000/, Rs. 25,000/-, Rs.30,000/- etc. for which there is no explanation. In the reply to the interim application, the Applicant No. 1 has not disputed that the family owns factory, shop etc and the contention is that the assets are owned by the family. The income of the Applicant No.1 is to his own knowledge and therefore, he was required to place necessary material on record to show his actual income. There appears to be suppression of his true income and the possibility of him being part of the family business cannot be ruled out. It appears that the Revision Applicants are engaged in business as rightly pointed out by the Respondent wife, the GST number has been obtained in the name of Revision Applicant No. 1 which is evident from the pan card which forms part of the GST number. At interim stage, the Trial Court and Appellate Court has assessed the income of the Applicant No.1 on the basis of the material made available and no infirmity can be found in the impugned orders.

15. Now coming to the income of the Respondent wife, the Applicant No.1 in his affidavit in reply has stated that the Respondent wife is earning about Rs. 35,000/- per month and in support thereof relies upon the income tax returns of the Respondent wife 2012 to 2022. Pertinently, there is no details in the reply about the source of income as to whether the Respondent is in service or doing any business. It is well known that in business families, the female members are shown to be participating in the family businesses and income tax returns are filed in their name. It appears that in the present case also, the income tax returns have been filed in the name of the Respondent wife by the Revision Applicants. If indeed the Respondent wife was employed, the details would be to knowledge of the Applicant, considering that the income tax returns produced by him are for the period prior to the dispute between the parties. Reliance placed on bank transfer of Rs. 5,00,000/- of the year 2015 is misplaced as the same is prior to the dispute. It has to be demonstrated that at the time when there is claim for interim maintenance, the Respondent wife has sufficient income to maintain herself.

16. The submission of the Respondent wife pointing out the forged pan card as well as the husbands mobile number in the income tax returns as well as his email id cannot be lightly brushed aside. From the material on record, *prima facie* it appears that the Respondent wife does not have any source of income.

17. The whole purpose for filing of the affidavit of disclosure of assets and liabilities is to assist the Trial Court in considering the income and expenses of the respective parties to arrive at the quantum of interim maintenance. However, by not stating the crucial elements such as the actual income and expenses, the Trial Court was handicapped in assessing the monthly income of the Revision Applicant No.1 and has therefore relied upon the income tax returns which were filed. The submission that wrong inference of income of Rs.6,00,000/- has been drawn by the Trial Court is liable to be rejected as what the Trial Court has considered is his approximate income of Rs.6,00,000/-. The Trial Court on the basis of material which has come on record has rightly granted a sum of Rs.25,000/- per month to the Respondent No. 1 wife and Rs. 15,000/- to the daughter Neva.

18. As this Court is informed that presently even the second child is now in the custody of the Petitioner, the expenses which was shown towards meeting the educational expenses of the second child now cannot form part of his expenses. The elder child is shown to be aged about 16 years and thus, the sum of Rs.15,000/- per month which has been granted cannot be said excessive. The amount of Rs.25,000/- has been sought to be assailed on the ground that the Respondent wife has a source of income which has discussed above has not been prima facie proved by the Revision Applicant No. 1.

19. In light of above, there is no merit in the Revision Application. Revision Application stands dismissed.

20. In view of disposal of Revision Application , Interim Application does not survives for consideration and the same is disposed of.

[Sharmila U. Deshmukh, J.]