IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.67 OF 2023

Balasaheb Mahadeo Shinde ...Applicant.

Versus

Pushpanjali Balasaheb Shinde ...Respondent.

WITH
INTERIM APPLICATION NO.1025 OF 2024
IN
CRIMINAL REVISION APPLICATION NO.67 OF 2023

Pushpanjali Balasaheb Shinde ...Applicant.

Versus

Balasaheb Mahadeo Shinde ...Respondent.

Mr. Amol B. Jagtap for the Applicant.
Ms. Anita Murgude for Respondent.
Ms. G. P. Mulekar for Respondent-State (Through V.C.)

Coram : Sharmila U. Deshmukh, J.

Date : 1st April, 2024.

P. C. :

1. Heard.

2. By this Revision Application, the challenge is to the order dated 4th January 2023 passed by the Sessions Judge in Criminal Appeal No.18/2021 filed by the Applicant- husband against the order dated 19th November 2021 passed by the Judicial Magistrate First Class (JMFC) in Criminal Miscellaneous Application No.191/2019. The facts of the case are that Respondent-wife had filed PWDV Application No.191/2019 in which an Application under Section 23 of the DV Act was filed seeking maintenance of Rs.2 Lakhs on the ground that the revision Applicant is a businessman running milk dairy business and earning Rs.10 lakhs per month. JMFC granted interim maintenance of Rs.50,000/- per month from the date of the Application apart from granting other reliefs.

3. The Appellate Court partly allowed the appeal and granted maintenance in phase wise manner i.e. from July 2019 to December 2019 at the rate of Rs.10,000/- per month, from January 2020 to December 2020 at the rate of Rs.15,000/- per month, from January 2021 to December 2021 at the rate of Rs.20,000/- per month and from January 2022 onwards at the

rate of Rs.25,000/- per month till the final disposal of the DV Application.

4. Heard *Mr. Amol B. Jagtap for the Applicant , Ms. Anita Murgude for the Respondent and Ms. G. P. Mulekar for Respondent-State (Through V.C.)*

5. Learned counsel for the Applicant would object only to the clause granting maintenance of Rs.25,000/- per month from January 2022 on the ground that while granting maintenance of Rs.25,000/- what has been taken into consideration is the gross net income of the revision Applicant i.e. Rs.56,86,509/- as per the income tax returns which were filed. He would point out the findings at paragraph 15 of the impugned order in which the Appellate Court has noted the income tax return details which showed income of the Applicant for the Assessment Year 2020-2021 from all sources such as profit from business, rent, interest, agricultural income and other income. According to him, by reason of mentioning the gross income of the opponent, the gross income is the basis for granting sum of

Rs.25,000/- as monthly maintenance . He would submit that the only grievance is that the maintenance is granted on the basis of the gross income and not on the basis of the net income. He would further point out the Affidavit of Assets of Respondent - wife in which she has mentioned that she is owner of certain agricultural lands.

6. *Per contra*, learned counsel for Respondent would submit that Application has been filed seeking interim maintenance and that the amount of Rs.25,000/- is not based by taking into consideration the gross income as the income of the revision Applicant. She would further submit that it is settled that the income tax returns do not furnish accurate guide of the real income. In support she relies upon decision of the Apex Court in ***Kiran Tomar and Ors. vs. State of Uttar Pradesh and Anr., 2022 SCC Online SC 1539 and Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy, (2017) 14 Supreme Court Cases 200.***

7. Considered the submissions and perused the record.

8. The Appellate Court while considering the grant of interim maintenance has considered the documentary evidence in the form of income tax returns which has come on record. The Appellate Court on the basis of income tax acknowledgments noted that the milk business of the revision Applicant appears to be a profitable business and there is sufficient income from the business as well as the agricultural land and for said purpose has noted that the income of the Applicant for the Assessment Year 2020-2021 from all sources of Rs.56,86,509/-. From the perusal of the order of the Appellate Court it does not disclose that the same has been taken as the take home income of the revision Applicant and based on the said amount a sum of Rs.25,000/- has been calculated. In event the said amount of Rs.56,86,509/- would have been taken as the take home income of the revision Applicant, the amount of interim maintenance would have been much higher. In my opinion, merely mentioning the yearly income of the revision Applicant as disclosed from the income tax return would not amount to the same forming the basis for the purpose of grant of amount of interim maintenance.

It is well settled that at the stage of grant of interim maintenance there is certain element of guess work which is involved based on the documentary evidence which has come on record. It is only after the evidence being led that the actual income of the parties would be established by leading cogent evidence and based on the said evidence monetary reliefs if any, will have to be granted. As regards the income of the Respondent-wife reliance merely on the agricultural land which is possessed by the Respondent without any further documents to indicate that those agricultural lands are being cultivated from which she is earning any income does not assist the case of the revision Applicant. It is also settled by the Apex Court in the case of ***Rajnesh vs. Neha (2021) 2 SCC 324*** that even if the wife is earning certain income that does not dis-entitle the wife to receive maintenance especially if she is to be maintained in the same standard of living as that of the Respondent-husband. In the present case, nothing has been demonstrated that there is no disparity of income between the Applicant and Respondent-wife which would dis-entitle the Respondent-wife to claim interim maintenance.

9. Having regard to the discussion above, there is no reason to interfere in the exercise of powers under Section 397 of Cr.P.C. in the order of grant of maintenance of Rs.25,000/- per month. Needless to clarify that while deciding the amount of maintenance the Trial Court would take into consideration the fact that the maintenance has to be decided based on the net income of the Applicant-husband and after taking into consideration the expenses, dependents as well as comparative incomes of both the parties.

10. In view of disposal of the Revision Application, the Interim Application does not survive for consideration and the same is disposed of. Liberty to the Respondent-wife to withdraw the amount deposited in this Court

[Sharmila U. Deshmukh, J.]