



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.117 OF 2024

Bimbisar Baburao Gaikwad

.. Petitioner

Versus

Diksha W/o Bimbisar Gaikwad @
Diksha D/o. Prakash Bankar

.. Respondent

...

Adv. Sachin Subhash Panale for Petitioner.

Adv. Adesh R. Ban h/f. Adv. Ravindra Vitthal Gore for Respondent.

...

CORAM : Y.G. KHOBRAGADE, J.

DATE : 15.01.2025

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of both the sides, it is heard finally at the stage of admission.

2. The Petitioner/husband has invoked the jurisdiction of this Court under Article 227 of the Constitution of India and takes exception to the Judgment and Order dated 27th September 2023 passed by the learned Additional Sessions Judge, Aurangabad, in PWDVA Appeal No.12 of 2023, thereby affirmed the order dated 2nd January 2023 passed below Exhibit-4 in PWDVA Application No.32 of 2022 passed by learned Judicial Magistrate, First Class, Court No.9, Aurangabad, wherein interim maintenance of

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Rs.15,000/- per month was granted in favour of the Respondent-wife under the Protection of Women from Domestic Violence Act, 2005.

3. Having regard to the submissions canvassed on behalf of both the sides, I have gone through the petition paper book. It is an admitted fact that both the Petitioner and Respondent are divorcee. They performed second marriage on 2nd July 2021, as per custom and rights prevailing in their society. The Respondent-wife filed PWDVA Application No.32 of 2022 an application under Section 12 of the Domestic Violence Act alleging that, after marriage, she cohabited with Petitioner/husband at Wagholi, Pune. She was treated well for a few days, however, subsequently, domestic violence was raised against her at the hands of the Petitioner under state of consumption of drugs. She further alleged that, her husband-Petitioner assaulted, abused her and issued life threat. The Petitioner/husband was having extra marital affair.

4. The Respondent-wife also filed an application for interim maintenance. On 2nd January 2023, the learned Judicial Magistrate First Class, Court No.9, Aurangabad passed an order and directed the Petitioner to pay Rs.15,000/- towards interim maintenance to the Respondent-wife from the date of application i.e. from 12th January 2022 during the pendency of main application.

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5. Being aggrieved by said order, the Petitioner-husband filed PWDVA Appeal No.12 of 2023 under Section 29 of the Domestic Violence Act. On 27th September 2023, the learned First Appellate Court passed the impugned order and dismissed the appeal of the Petitioner.

6. On face of record it appears that, the present Petitioner/husband is working with Bajaj Finserv Pune being a Data Analyst and drawing salary of Rs.50,000/- per month. The Petitioner has not disputed about his employment in the private sector being a Data Analyst.

7. In *Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy*¹, the Hon'ble Supreme Court considered case of *Kulbhushan Kumar Vs. Raj Kumari*² and held that, 25% of the husband's net salary would be just and proper to be awarded as maintenance to the Respondent-wife. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependent on the factual situation of the case and the Court would be justified in molding the claim for maintenance passed on various factors.

8. In the case in hand, the Petitioner is drawing monthly salary of

1 (2017) 14 SCC 200

2 (1970) 3 SCC 129

Rs.50,000/- and if 25% maintenance is considered, then it would come to Rs.12,500/-. However, in the case in hand, the learned trial court granted interim maintenance or Rs.15,000/- per month which was affirmed by the learned Appellate Court, without considering the law laid down in case of ***Kalyan Dey Chowdhury***. Therefore, it prima facie appears to be exorbitant and excessive of 25%. In view of above discussion, impugned judgment and order passed by the learned Additional Sessions Judge, Aurangabad affirming the order dated 2nd January 2023 passed below Exhibit-4 in PWDVA Application No.32 of 2022 is hereby modified to the extent of quantum of maintenance. The Respondent-wife is hereby held entitled to receive amount of Rs.12,500/- per month towards interim maintenance during the pendency of main application i.e. PWDVA Application No.32 of 2022. Accordingly, the petition is partly allowed.

9. Rule is made partly absolute in the above terms. Parties to bear their own costs.

[Y.G. KHOBRADE, J.]

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