

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 99 OF 2024

Aaryl Gerwin Arthur D'Sa	}	
Age: 37 years, Occ: Self Employed	}	
Adult Indian Inhabitant of	}	
Residing at : 401, Vasant Krupa,	}	
Gaodevi Road, Near Poisur Depot,	}	
Kandiwali (W) Mumbai 400 067	}	...Applicant (Org. Respondent No.1)

Versus

1. State of Maharashtra	}	
through the Public Prosecutor, PWD	}	
Building, Opp. High Court, Mumbai.	}	
2. Renee Aaryl D'Sa	}	
Age: 36 years, Occ: Service Residing	}	
at D/301, Janki Niwas, Pathanwadi,	}	
Malad (E), Mumbai 400 097.	}	...Respondent

Ms. Chermaine Bocarro a/w Adv Mr. Satyadev Sharma i/b Mr. Vivek Sharma, for the Applicant.
Mr. Ravish Mishra, for Respondent No. 2.
Dr. Dhanalakshmi Krishnaiyar, APP, for Respondent No.1-State.

CORAM : MANJUSHA DESHPANDE, J.

RESERVED ON : 20th NOVEMBER 2025.

PRONOUNCED ON : 4th DECEMBER 2025.

Judgment:

1. Rule, Rule made returnable forthwith. Heard finally with the consent of the parties.

RUSHIKESH
VISHNU
PATIL

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2. This Criminal Revision Application arises out of the order dated 08.02.2023 passed below Interim application in CC No.215/DV/2021 by the Metropolitan Magistrate, 67th Court, Borivali, Mumbai, partly allowing the application filed by the Respondent No. 2 herein, directing the Revision Applicant to pay monthly maintenance of Rs.10,000/- to the Respondent and Rs.5,000/- to her son, namely, Avior from the date of filing of application till disposal of the main Application. Further an amount of Rs.10,000/- Per Month, has been granted towards rent for separate accommodation and Rs.10,000/- Per Month towards educational expenses for their son- Avior. This order was assailed in Criminal Appeal No. 73 of 2023, before the Court of Sessions at Dindoshi (Borivali Division), Goregaon, Mumbai, which is dismissed, vide order dated 28.08.2023, Hence this Criminal Revision Application under section 401 of the Cr.P.C, 1973.
3. The Applicant-husband has restricted his challenge to the extent of the orders directing him to pay maintenance of Rs.10,000/- to Respondent-wife and Rs.10,000/- as rent for her separate accommodation in this Criminal Revision Application.
4. The brief facts leading to filing of the Application under Section 12 of the Protection of Women under the Domestic Violence Act, 2005 (for short "POWDV Act, 2005) in nutshell, are that, the parties were married on 05.01.2014. The Applicant-husband was working in Merchant Navy, when they got married. The Respondent-wife is also holding qualifications of B.Com, MBA (Finance) and Inter CA. She was also working when they were

married. A son, namely, Avoir was born on 25.09.2016, after that in order to look after the son, the Respondent-wife has resigned and is a homemaker ever since. It is alleged that, the Respondent-wife is suffering from mental depression, Schizophrenia, Distress etc. The parties did not have a smooth married life; the Applicant-husband was often on the ship, due to his work. Whenever he was available, they used to reside together. Even during their stay there was constant disharmony between the parties. It is alleged by the Respondent-wife that the Applicant-husband left the Respondent on the pretext that he would be joining the ship, for his duty. However, due to beginning of COVID-19 pandemic his ship did not sail and he stayed back, residing with his parents. Ever since he is residing with his parents and he has avoided the Respondent-wife. He has left the Respondent and her child without making any provision for them. Due to various incidents of physical and mental torture during their stay together and his eventual desertion lead to the filing of D.V. complaint by the Respondent-Wife.

5. During the pendency of the D.V. complaint, the Respondent-wife filed interim application in March 2021, claiming various reliefs such as maintenance, accommodation, expenses of child, and protection order, invoking section 17, 19, 20 of the POWDV act. It was opposed by the Applicant-husband by filing his reply. Both parties have filed Affidavit of Assets and Liabilities, based on it the impugned order dated 08.02.2023 and 28.08.2023 have been passed, which are subject matter of the present Revision Application.

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6. Ms Chermaine Bocarro, learned counsel for the Applicant at the outset would submit that the Applicant has partially challenged the order dated 08.02.2023, only to the extent of the directions given to make payment of maintenance of Rs.10,000/- to Respondent No. 2-wife and payment of Rs. 10,000/- towards rent for accommodation. This aspect, which is part of his pleadings, has been totally lost sight of by the learned Sessions Judge, and has proceeded to decide the Appeal as if the entire order is under challenge.
7. It is further contended that the Affidavit of Assets and Liabilities does not disclose the true and correct picture of the assets of Respondent No. 2. According to her, the Respondent-wife is educated and well qualified, her qualification itself are indicative of her capacity to earn. She has worked with reputed organisation like Mumbai Metro Rail Corporation from 26.10.2015 to 31.7.2017 under her maiden name, Renee Robert Rodrigues. Even prior thereto, from April 2011 till January 2015, she has worked with Morgan Stanley. Relying on the WhatsApp chat it is claimed by Applicant in his affidavit that she is employed with Genmart Generic Pvt. Ltd. since 01.07.2020. Hence according to the Applicant, on the background of the fact that Respondent-wife is already employed, the grant of Rs.10,000/- per month towards her maintenance by the Metropolitan Magistrate is not justifiable.
8. As regards to the grant of Rs.10,000/- per month towards rent for accommodation is concerned, it is submitted that the address

given by the Respondent-wife in her Affidavit of Assets and Liabilities is of her parental home i.e. D-301, Janaki Niwas, Pathanwadi, Malad East, Mumbai, which is owned by her father. According to the Applicant, whenever he was not sailing, they have stayed together at 401 Vasant Krupa CHSL, Near poisur Depot, Kandiwali (West), and whenever he was away the Respondent was staying at her parent's House. Even presently, according to her own pleadings, the Respondent is residing with her parents. Therefore, grant of Rs.10,000/- towards the separate accommodation charges is not justifiable.

9. It is alleged by the Applicant that, the Respondent-wife has given false declaration in her Affidavit of Assets and Liabilities, where she has suppressed certain vital information. She has also suppressed her history of depressive disorder/schizophrenia and that she is on medication under the Medical Supervision of Psychiatrist. The fact of her mental health issue was not disclosed by the Respondent-wife and her parents before marriage. The Applicant has alleged that the mental condition of Respondent deteriorated post her delivery. She began imagining and fearing that some harm had befallen on their minor son. She also had suicidal thoughts, hence he was of the opinion that it was unsafe for the Respondent-wife to be left alone with their minor son in the house. She had anger bouts and rage issues too.

10. The learned counsel further submits that, the Applicant had taken care of all the expenses by either making bank transfers or leaving cash when he was on the ship. He had also opened a

joint account with the Respondent-wife in State Bank of India viz Bank Account No.37072495359. The Applicant has been regularly depositing maintenance and expenses in the said joint account. The extracts of the amount deposited on various dates from 18.03.2016 to 01.06.2022 has been reproduced in the affidavit itself, which amounts to Rs.12,53,750/-. It is contended by him that the Respondent-wife has liquidated an amount of Rs.9,80,000/- from their joint account and transferred it to an unknown person just 12 days prior to the first notice sent by her lawyer. It is further submitted that without being satisfied that the Applicant has committed domestic violence, the order impugned came to be passed. It is thus bad in law and liable to be set aside.

11. It is the contention of the learned counsel for the applicant that the learned Metropolitan Magistrate has not appropriately considered the Affidavit of Assets and Liabilities filed by the respective parties, There is a clear averment about the qualifications of the Respondent-wife. In his affidavit he has categorically mentioned the various establishments under which the Respondent-wife had worked. Hence, she is capable to earn her livelihood.

12. Similarly he has also demonstrated that he was working as Senior Customer Service Associate in a Private company. Even that employment was discontinued because of this persistent backache, and he has joined Tele Performance Pvt Ltd where he is drawing a meager salary of Rs. 24,240/- per month, He is

therefore not in a position to carve out a separate allowance towards maintenance for the Respondent-wife. The important fact that the Respondent-wife is qualified and capable of earning, has been totally lost sight of by both the Courts below.

13. He further submits that as far as grant of Rs.10,000/- towards separate accommodation is concerned, even that amount ought not to have been granted since the Respondent is admittedly residing with her parents. He therefore submits that orders passed by the Court below to the extent of grant of maintenance of Rs.10,000/- towards maintenance to the Respondent and Rs.10,000/- towards the separate accommodation requires interference by this court.

14. Mr. Ravish Mishra, learned counsel for the Respondent-wife has vehemently opposed the submissions and the reliefs prayed by the Applicant-husband. It is submitted that the Applicant-husband is working in the Merchant Navy with a handsome salary. It is his duty to maintain the Respondent and their young child. Since beginning of their marriage the applicant has neglected and refused to maintain the Respondent-wife. Upon insistence of the applicant they had decided to have a child, but after the birth of their son, the Respondent was constrained to resign, since she was not in a position to cope with the dual responsibility of pressure of work as well as nurturing a baby. Since 2017, she is not employed and therefore she does not have any independent source of income. She has accordingly filed her Affidavit of Assets and Liabilities, wherein she has claimed that

her monthly expenses, inclusive of rent, household, medical bills, transportation are to the extent of Rs.60,000/- and the expenses of the child are Rs.30,000/- per month. As such she has claimed an amount of Rs.1,00,000/- per month towards maintenance for herself and their young child Avior.

15. It is further claimed that, apart from his income from employment, the Applicant has various properties in Mumbai, Nashik, Lonawala and Pune. The applicant has also joint accounts with his parents in four banks, details of which are given by her. During the pendency of the application, the applicant has disputed the contents of the Affidavit of Assets and Liabilities filed by the Respondent and has filed an application under Section 28(2) of POWDV Act, 2005, invoking Section 91 of Cr.PC. r/w Order 11 Rule 14 of CPC, seeking directions to the Applicant to produce relevant documents about employment and qualification of the Respondent, her finances and the details of the five bank accounts which are mentioned in the application along with the medical expenses and documents. The Respondent has filed her rejoinder to the affidavit in reply to the application under Section 23 of POWDV Act, 2005, wherein she has categorically mentioned that she has accounts, both in her married as well as maiden name, out of which, some of them have become non-operational, as they were the salary accounts during her employment with various establishments.

16. The learned counsel for the Respondent-wife has drawn my attention to the statement of account of the savings account

of the applicant in Bharat Co-operative Bank (Mumbai) Ltd., which discloses regular entries of deposits of similar amounts made on one and the same day which is repeated in cycles. The said amounts are ranging from Rs.300/- to Rs.2000/-. There are number of transactions on one particular date, which shows deposits of various amounts. It is contended that the applicant has withdrawn an amount of Rs.25,602/-, Rs.15,361/-, Rs.52,600/- and Rs.1,12,240/- from the very account, and paid it to the builder for purchasing a flat as reflected in the bank statement. The applicant on one hand has purchased a flat, and at the same time he is claiming that he does not have sufficient income for the maintenance of the Respondent-wife and their child.

17. Thus, according to the learned counsel for the Respondent-wife, the applicant has not come before this Court with clean hands. It is contended that since the Applicant-husband has deserted the Respondent-wife and their child without making any provision for them, constraining her to reside with her parents and borrow from them for her sustenance, has been disclosed by her in her Affidavit of Assets and Liabilities. The learned counsel for the Respondent also relies on the bank account of the Applicant jointly held by him in the Kotak Mahindra Bank with his father, which shows withdrawal of considerable amounts from the said account ranging between Rs.25,000/-, to Rs.7,00,000/- on various occasions. It is thus evident that the Applicant-husband is having means and resources to maintain the Respondent-wife, Yet he has neglected and refused to maintain

them, therefore, the order passed by both the Courts does not deserve any interference.

18. I have heard the respective parties. After hearing the parties and going through the papers placed on record, it is evident that the Respondent-wife has filed complaint under Section 12 of the POWDV Act, 2005, and pending the complaint she has filed interim application for certain reliefs for her sustenance including separate accommodation. In her application, she has prayed for protection orders under Section 18 of the D.V Act, alongwith Rs.1,00,000 Per Month towards maintenance for herself and her child as provided under Section 20; to pay the school fees of the child as and when necessary and provide shelter for the residential purpose or in the alternate to pay monthly rent of Rs.60,000/- per month and pass necessary orders under Section 19 of the Act. Both the parties have relied on the averments made by them in the application as well as Affidavit of Assets and Liabilities along with the bank statements.

19. After taking into consideration the rival submissions, the learned Metropolitan Magistrate, 67th Court of Borivali has allowed the application filed by the Respondent by granting maintenance of Rs.10,000/- and Rs.5,000/- respectively, to the Respondent and their child with a direction to pay Rs.10,000/- towards rent for separate accommodation and Rs.10,000/- towards education charges of their son Avoir. Rest of the claims of the Respondent have not been considered by the trial Court. The order dated 08.02.2023 was assailed before the Sessions Court at

Dindoshi, Borivali by the Applicant by challenging it only to the extent of maintenance of Rs.10,000/- granted to the Respondent and Rs.10,000/- granted towards the separate accommodation, which has been rejected by the Sessions Court.

20. Both the Courts have come to the conclusion that from the contents of the application, a *prima facie* case of domestic violence is made out by the respondent. Section 23 of the POWDV, Act 2005 grants discretionary powers to the Magistrate to grant relief in favor of the applicant after being satisfied that the application *prima facie* discloses commission of 'Domestic Violence'. It empowers the Magistrate to pass order under Sections 18, 19, 20, 21 and 22 against the Respondent. Thus, it is incumbent upon the Magistrate to record his satisfaction from the contents of the application that there is *prima facie* case of domestic violence made out by the applicant.

21. 'Domestic violence' has been defined under Section 3 of the Act which is not limited only to the extent of physical abuse or sexual abuse but it also includes economic abuse, whereby there is deprivation of economic or financial resource to which the aggrieved person is entitled under any law. A wider meaning is given to the definition of Domestic Violence in Section 3 of the Act. Section 3 of the act is reproduced hereunder which reads thus:

"3. Definition of domestic violence: For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.”

22. The Respondent has made categorical averment in her application that the applicant has all the resources, but he has left her alone with her child without making any provision for them, during the difficult times of COVID-19 pandemic. In fact he has left the house under the pretext of joining the ship for his duties, but it turned out that he did not join at all. On the contrary he avoided the company of the Respondent and resided with his parents. During the Pandemic, the Respondent who is not employed and has no source of income, was forced to survive, by borrowing from her parents which certainly comes within the sweep of definition of ‘Economic Abuse’. Apart from allegations of economic abuse there are other allegations of neglect and avoidance against the Applicant.

23. Since the order passed by the Metropolitan Magistrate has been challenged by the applicant only to the extent of maintenance granted to the Respondent and the allowance which is directed to be paid towards residence. The challenge in

the Writ Petition is also restricted to that extent. So far as the first ground is concerned, according to the applicant, the Respondent is educated and qualified lady, who has a capacity to earn and is actually earning hence she should not have been granted any maintenance at all by both the Courts below. It is not in dispute that an educated and competent women, earning sufficiently is not entitled for grant of interim maintenance. The very object of grant of interim maintenance is sustenance of the applicant during the litigation between the parties, if she is unable to maintain herself, At the same time the non-applicant has sufficient means and capacity to support the applicant. In the present case the Respondent herself has made a categorical averment, that though she was employed regularly with various establishments, prior to her marriage and for some time even after her marriage, however after the birth of their child, she could not continue her work and was constrained to resign. Therefore presently she has no work and no source of income. She is managing her life by borrowing from her father and residing with her parents as well. Though Applicant claims that respondent is employed, he has not substantiated his claim by any supporting documents. Therefore it is very much evident that presently the Respondent is not employed. It also needs to be appreciated that there are averments made by the applicant that the Respondent is suffering from depression and Schizophrenia, which requires continuous medication and it is not advisable for the Respondent to live alone with their child without being monitored.

24. Hence, on such background I do not find that the learned Magistrate has committed any error by granting maintenance of Rs. 10,000/- to the Respondent, which in fact is a very reasonable amount.
25. As regards the challenge to grant of Rs.10,000/- towards rent for separate accommodation, it is the stand of the Respondent-wife that she is residing with her parents at Malad (East), Mumbai, in the house owned by her father, as she cannot afford a separate residence. Out of sheer necessity, the respondent is constrained to reside with her parents. Hence having *prima facie* formed opinion that there is a 'Domestic Violence' by the petitioner it is well within the power of the Magistrate to pass an order directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstance so require. In the present case the applicant himself in his reply affidavit, has categorically stated that when he was not on ship, the respondent and their minor son used to reside with him at Vasant Krupa CHSL, Kandiwali (West), Mumbai. The said flat was owned jointly by his mother and his aunt. He has also stated that whenever they used to stay together on the given address, he bore all the expenses. Thus it is evident that the applicant was residing with the respondent at kandivali (West) when he was not on the ship. Therefore the respondent is entitled for the same level of alternate accommodation as enjoyed by her in her 'shared household' or in the alternative she is entitled for the rent of the similar

accommodation. Section 19 of the POWDV act empowers the magistrate to pass residence order. The relevant portion of Section 19 is reproduced hereunder which read thus:

19. Residence orders: (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b)....

(c)....

(d)....

(e)....

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require

Section 19(1)(f) empowers the court to pass order for separate accommodation or rent as claimed by the Respondent. Even section 23 of the act empowers the Magistrate to grant interim and ex-parte order, as it deems just and proper. Upon being satisfied that the application prima facie discloses commission of Domestic Violence, the Magistrate is empowered to pass appropriate orders in favour of aggrieved person under section 18, 19, 20, 21 as well as 22 of the Act, against the Respondent. Accordingly, the learned magistrate has passed an order granting reasonable amount of Rs. 10,000/- for separate accommodation in favour of the respondent.

26. The reliefs claimed by the respondent, have been granted by the Magistrate upon recording his satisfaction that *prima facie*, the respondent herein makes out the case of ‘domestic violence’.
27. The applicant is challenging the orders passed by both the Courts in the Revisional jurisdiction of this Court invoking Section 401 of the Code of criminal Procedure, 1973. The powers of this Court in its Revisional jurisdiction are limited and it cannot re-appreciate the evidence. Usually the Revisional jurisdiction is exercised by the Court, when a question of law is raised by either of the parties. Mere appreciation of evidence resulting in a particular finding, when two possible views are available, does not confer power on the Revisional Court to take a different view in the matter. There has to be a perversity or arbitrariness in the findings recorded, which necessitates interference by the Revisional Court. The powers of the court in its Revisional jurisdiction has been considered at great length in the reported judgment of *Janata Dal vs. HS Chowdhary*¹. The relevant paragraph is reproduced herein under which reads thus:

“130. The object of the revisional jurisdiction under Section 401 is to confer power upon superior criminal Courts – a kind of paternal or supervisory jurisdiction - in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has resulted on the one hand, or on the other hand in some undeserved hardship to individuals. The controlling power of the High Court is discretionary and it must be exercised in the interest of justice with regard to all facts and circumstances of each particular case, anxious

1. (1992) 4 SCC 305

attention being given to the said facts and circumstances which vary greatly from case to case.
”

28. The order passed by the Metropolitan Magistrate has been challenged by the Applicant only to the extent of the maintenance granted in favour of the Respondent and the allowance directed to be paid towards rent. The learned Magistrate, after satisfying himself about the prima facie case of ‘Domestic Violence’ and finding that the refusal to maintain the Respondent amounted to economic abuse, has passed the order. The Applicant could not prove that the Respondent was employed gainfully. Hence, the prima facie findings recorded by the Magistrate have not been interfered with by the Appellate Court.

29. Thus I do not find that there is any perversity or illegality, resulting into undeserved hardship to the applicant hence in view of the limited powers of interference conferred by section 401 of Cr.PC, there is no scope for interfering in the impugned orders. As such the Criminal Revision Application fails.

30. Rule is discharged.

[MANJUSHA DESHPANDE, J.]