

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.211 OF 2025

Shaikh Shariful Islam	...Applicant
<i>Versus</i>	
Habiba Shariful Islam & Anr.	...Respondents

Mr. Hrishikesh R. Chavan, Advocate for Applicant.
Mr Khwaja Shaikh, Advocate for Respondent No.1.
Ms. S.D. Shinde, APP for State.

CORAM: MADHAV J. JAMDAR, J.
DATED : 17th June 2025

P.C.:

1. Heard Mr. Hrishikesh Chavan, learned Counsel appearing for the Applicant, Mr. Khwaja Shaikh, learned Counsel appearing for Respondent No.1 and Ms. Shinde, learned APP for the State of Maharashtra.

2. The challenge in this Criminal Application filed under Section 482 of Criminal Procedure Code, 1973 is to the Order dated 19th October 2024 passed by learned Additional Sessions Judge, City Civil & Sessions Court, Borivali Division, Dindoshi in Criminal Appeal No.187 of 2021. The challenge in said Appeal was to the Order granting interim maintenance dated 16th March 2021

passed below Exhibit 3 in CC No. 25/DV/2018 passed by the learned Metropolitan Magistrate, 10th Court, Andheri, Mumbai. By the impugned Order, dated 19th October 2024 passed by the Appellate Court, the Order dated 16th March 2021 of the learned Metropolitan Magistrate granting interim maintenance of Rs.20,000/- per month has been modified to certain extent and the said amount has been reduced to Rs.15,000/- per month.

3. It is the main contention of Mr. Chavan, learned Counsel for the Applicant that the impugned Order of the learned Metropolitan Magistrate has been passed without hearing the Applicant. He points out Roznama dated 9th February 2021 to substantiate the said contention. He submits that in fact time was granted for filing reply and therefore observations of the learned Metropolitan Magistrate in the Order dated 16th March 2021 to the effect that the reply has been filed at Exhibit 13 and the learned Advocate of both the sides were heard by the learned Metropolitan Magistrate is not correct.

4. Mr. Chavan, learned Counsel further submits that although the Applicant was earlier working at Saudi Arabia for about 12

years, now he is working with small toy shop in Mumbai and getting salary of Rs.10,000/- per month.

5. On the other hand, Mr. Shaikh, learned Counsel for the Respondent No.1 submitted that he has personally argued the matter before the learned Trial Court and reply has been filed by the Applicant at Exhibit-13 and the order has been passed after hearing learned Counsel of the Petitioner. He submitted that no interference in the impugned order is warranted.

6. Perusal of the Order dated 16th March 2021 of the learned Metropolitan Magistrate shows that in paragraph No.2, it is mentioned that the present Applicant (Original Respondent No.1) has filed reply at Exhibit-13. The contents of the reply are also summarized in said paragraph No.2. The reliance by Mr. Chavan, learned Counsel for the Applicant on the Roznama dated 9th February 2021 is misconceived as what is recorded in the said Roznama is that the reply has not been filed by the Respondent to Exhibit-18 Application. The Order of learned Metropolitan Magistrate has been passed below Exhibit-3 and therefore the said statement in the Roznama dated 9th February 2021 is not relevant.

In fact the Appeal Memo, which has been annexed from page-52 onwards filed in Criminal Appeal No.187 of 2021 by the present Applicant, on page 57, it is stated that on 30th November 2018, the present Applicant has filed reply bearing Exhibit-13 to the said Exhibit 3 Application.

7. As far as contention that the learned Advocate of the Petitioner has not been heard, learned Counsel for the Respondent No.1 in the present Application states that he has personally appeared in the matter before the learned Trial Court and the learned Advocate of the present Applicant has argued the matter before the Trial Court. Therefore, there is no substance in the said contention.

8. Perusal of the record shows that the Applicant was working in Saudi Arabia. It is admitted position that the Applicant was working in Saudi Arabia for about 12 years.

9. The Order of the learned Metropolitan Magistrate has been challenged before the learned Additional Sessions Judge, and the learned Additional Sessions Judge has reduced maintenance of

Rs.20,000/- per month granted by the learned Metropolitan Magistrate to Rs.15,000/- per month.

10. Learned Counsel for Respondent No.1 states that considering the said amount of Rs.15,000/- per month, the arrears are more than 13.00,000/- and what is paid by the present Applicant till date in aggregate is an amount of Rs.74,228/-. Even as per the contention of the Applicant after 26th June 2024, not a single penny has been paid to the Respondent No.1.

11. One more point raised by the learned Counsel for the Applicant is that the Affidavits in terms of the judgment in the case of **Rajnesh V. Neha**¹ have not been filed by both the parties and therefore the matter is required to be remanded back to the learned Metropolitan Magistrate. However, position on record shows that the concerned D.V. proceedings have been filed on 24th January 2018 and Exhibit-3 Application in CC/25/DV/2018 seeking maintenance has also been filed on 24th January 2018. The Order has been passed by the learned Metropolitan Magistrate on 16th March 2021 granting maintenance, which has been confirmed

¹ AIR 2021 Supreme Court 569

with modification as set out hereinabove by Order dated 19th October 2024, and till date arrears are more than Rs.13,00,000/-. Learned Counsel for the Applicant on instructions of the Applicant states that the Applicant is not ready to pay any amount.

12. As already noted hereinabove, the Applicant is not ready to pay any maintenance. Admittedly, the Applicant has sent Whatsapp messages to the Respondent stating that he is going to remarry with his girlfriend.

13. In the facts and circumstances of this case, no case is made out for interference. Accordingly, the Criminal Application is dismissed.

(MADHAV J. JAMDAR, J.)