



IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 856 OF 2024

...

Vibha W/o Shailesh Ashpillya,
Age – 38 Years, Occupation-Household,
R/o Near Poddar Bagicha,
Behind Sant Kawarram Dharmshala,
Wardha Tq. And District Wardha.

...

PETITIONER

- - V E R S U S - -

Shailesh S/o Harish Ashapillya,
Age: 43 Years, Occupation: Business,
R/o Tagor Nagar, Raipur,
Tq. And District Raipur (Chattisgarh).

...

RESPONDENT

WITH

CRIMINAL WRIT PETITION NO. 1001 OF 2024

...

Shailesh S/o Harish Ashapillya,
Aged 43 yrs, Occ. Nil,
R/o. Tagore Nagar, Raipur,

Tq. And Distt. Raipur,
(Chhatisgarh State).

... **PETITIONER**

- - V E R S U S - -

Vibha W/o. Shailesh Ashpillya,
Aged about 38 years, Occu:- Household work,
R/o. C/o. Laxmichand Holani,
Near Potdar Bagicha,
Behind Sant Kawarram Dharmashala,
Wardha, Tq. & Distt. Wardha.

... **RESPONDENT**

Mr. S.N.Singh, Advocate for the Petitioner.

Mr. A.U. Deshmukh, Advocate for Respondent.

CORAM : M.M. NERLIKAR, J.

DATE : DECEMBER 08, 2025.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally
with the consent of learned counsel for the parties.

3

2. The affidavit filed by the husband is taken on record.

The parties would be referred as husband and wife.

3. The challenge is raised to the judgment and order dated 22/07/2024 passed by the learned Sessions Judge, Wardha. The wife has challenged the said order by filing Criminal Writ Petition No. 856/2024, and the husband has challenged the same by filing Criminal Writ Petition No. 1001/2024. Both the petitions are taken up together for final disposal.

4. The learned counsel for the wife submits that the findings of the Sessions Court in Appeal are perverse as the order of the Trial Court has been modified by granting maintenance amount to wife from Rs.10,000/- to Rs.5,000/- and to son from Rs.10,000/- to Rs.5,000/-. Further, the amount was modified in respect of compensation from Rs.2,00,000/- to Rs.50,000/-. He submits that the findings are not based upon

4

the evidence which was placed on record, it is based on surmises and presumptions. There are three different versions given by the husband. First, in the evidence he has admitted that he has a business which he runs along with his brother. Second version is in the affidavit of assets and liability that states he is not getting any income. The third version is that he has filed affidavit before this Court stating that he is working with A.K. Textiles, wherein, salary certificate issued by the said company goes to show that he is getting Rs.10,000/- per month. Therefore, the Appellate Court ought to have drawn adverse inference against him. He further submits that the trial Court had after appreciating the entire evidence rightly granted maintenance to wife and child along with compensation. The grounds on which the Appellate Court has modified the order is that the husband is residing in a rented premises and there is no servant working in his shop which is illogical and unreasonable. Accordingly, he submits that the Appellate Court has miserably failed to appreciate the evidence in its proper

5

perspective. Lastly, he prayed that his Writ Petition No. 856/2024 be allowed by quashing and setting aside the order dated 22/07/2024 passed by the learned Sessions Judge, Wardha.

5. On the other hand, the counsel appearing for the husband vehemently submits that time and again, husband has placed on record salary certificate issued by A.K. Textiles which shows that he is getting only Rs.10,000/- per month. He further submits that admittedly the husband is residing in the rented premises and whatever establishment he was running along with his brother, at present, is not running the said shop, as there was family settlement, and in that family settlement, the shop at present is being run by the brother of the husband and the husband has disclosed true facts before this Court. The Appellate Court, after considering the entire evidence, has rightly passed maintenance order only to the extent of son. However, insofar as the wife is concerned, the Appellate Court

6

committed error in not considering the fact that she is also earning income by doing business of online jewellery. Further, he submits that she is working as a Manager in the Nirmal Bakery at Wardha, and therefore, she is getting a handsome salary. He further invited my attention to the evidence, and in cross-examination he stated that there is no servant working in the shop run jointly with his brother. The Appellate Court, so far as the income of the husband is concerned, has rightly dealt with the issue. He further submits that as the husband is not having any source of income, therefore, the Court has rightly modified the order granting compensation to the tune of Rs.50,000/- from Rs.2,00,000/-. Therefore, he submits that he is ready to pay Rs.5,000/- to his son, however, as the wife is getting a handsome salary, she is not entitled for any maintenance amount or compensation amount. Accordingly, prayed that Criminal Writ Petition No.1001/2024 be allowed.

6. Upon consideration of the rival submissions, it

7

appears that the petition under the provisions of the Domestic Violence Act came to be filed and the order was passed by the Judicial Magistrate First Class on 12/11/2019, wherein the maintenance amount of Rs.10,000/- each to wife and son was granted by the Magistrate. Further, it appears that rent of Rs.10,000/- per month was also granted and Rs.2,00,000/- compensation was also awarded. The trial Court has also directed to return Stree Dhan, gift articles and clothes received from the wife within one month. This order was challenged by the husband by filing appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005. In appeal, this order was modified to the extent that the wife and son were granted maintenance of Rs.5,000/- each. Further, compensation was modified to the tune of Rs.50,000/-, so far as rent amount is concerned, that was not granted and order to that effect was quashed. It further appears that the direction in respect of return of Stree Dhan, gift articles and clothes was quashed by the Appellate Court by allowing the appeal partly.

8

7. After perusal of the record, it appears that both parties have led evidence. In the affidavit filed by the wife, it has come on record that the husband and his brother are running wholesale cloth shop and are earning Rs.1,00,000/- to Rs.1,50,000/- from the said business. The said shop is located in the market, and accordingly, she has claimed Rs.15,000/- for herself and Rs.10,000/- for her son, totaling Rs.25,000/- as maintenance. She has further claimed compensation of Rs.5,00,000/-. It has come on record that the husband is not running the business individually, however, it is family business which is run jointly. So far as cross-examination is concerned, it does not speak anything about the source of income as is surfaced in the affidavit of examination-in-chief. On the contrary, during the cross-examination of the husband, it was brought on record that he is jointly running the business of selling clothes along with his brother. It has further come in the evidence that there is no servant working in his shop. It also appears on record that before the Appellate Court, the husband

9

has placed affidavit of assets and liabilities in which the column of monthly income is shown as “not applicable.” Further, today, the petitioner has filed an affidavit before this Court, placing on record that a settlement took place on 04/09/2024 among family members and he has waived his claim to the property, as the cloth shop was already being run by his brother, and was set up by his brother. Further document was placed on record showing that petitioner was working with A.K. Textiles and getting salary of Rs.10,000/- as could be gathered from Salary Certificate.

8. Apparently, the husband at different stages has taken different stand. Admittedly, so far as the evidence led in the Court is concerned, it has come on record that the shop is being run jointly along with his brother. As could be gathered from the entire evidence, nothing was brought on record by the husband to place reliance that he is not having any source of income. On the contrary, at three stages, before the trial Court,

10

the Appellate Court and this Court, the husband has taken different stands, and therefore, there is reason to believe that he is not coming with clean hands. Therefore, adverse inference is required to be drawn. As could be gathered from the evidence recorded by the Trial Court, wherein in the affidavit of examination-in-chief of wife, it was specifically brought on record that the husband is having income of Rs.1,00,000/- to Rs.1,50,000/-from the clothes business. Even in the cross-examination he has admitted that he is jointly running the business with his brother. However, in the affidavit of assets and liabilities, he has completely taken a U-turn by showing the column of monthly income as “not applicable”. The husband has gone one step ahead and has placed on record a settlement deed, wherein he has waived his right so far as the business of clothes is concerned, and also placed on record the certificate issued by A.K. Textile, wherein salary of Rs.10,000/- was shown. The aforesaid facts show that the husband is concealing his true income so as to avoid paying maintenance which is

very unfortunate. He has further suppressed his income in the affidavit of assets and liabilities which amounts concealment of income. The very purpose of laying down guidelines in the ***Rajnish VS Neha, (2021) 2 SCC 321***, about filing of affidavit of assets and liabilities is being frustrated. It is impossible to believe that he was not earning any income from the shop at the relevant time. The Supreme Court in ***Rajnish VS Neha, (supra)***, has observed in Paragraph No.63 as under:-

“63. At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guesswork or rough estimation takes place, so as to make a prima facie assessment of the amount to be awarded. It is often seen that both parties submit scanty material, do not disclose the correct details, and suppress vital information, which makes it difficult for the Family Courts to make an objective assessment for grant of interim maintenance. While there is a tendency on the part of the wife to exaggerate her needs, there is a corresponding tendency by the husband to conceal his actual income. It has therefore become necessary to lay down a procedure to streamline the proceedings, since a dependent wife, who has no other source of income, has to take recourse to borrowings from her parents/relatives

12

during the interregnum to sustain herself and the minor children, till she begins receiving interim maintenance.”

Even if it is assumed that he has now waived his right in the shop, however, before the Appellate Court it was not the case and at that point of time he was jointly running the shop as the settlement deed which is placed before this Court is of the year September, 2024. It also seems convenient that the settlement deed was immediately drawn after two months as the order of the Appellate Court is of July, 2024. Further, the salary certificate which is placed before this Court which demonstrates his income as Rs.10,000/- per month seems to be by way of an after-thought theory. Even if it is assumed that the husband is earning income as low as Rs.10,000/-, then no prudent man will voluntarily give up his claim of earning more income as has been done in the present case vide the settlement deed. It appears that the husband is trying to defraud the justice system. It is a settled position of law that fraud unravels everything.

13

9. The husband is duty bound to disclose his actual income before the Court and suppression of income can be used to infer that husband has sufficient means to maintain his wife. The observations of this Court in *Rupal Mayur Doshi VS Mayur Jaswantray Doshi, (2016) SCC OnLine Bom 14352*, in Para No.5 are relevant, which is as under:-

“5. We have seen that there is a tendency on the part of husbands to show that either they have no income or they have lost their job immediately after an application for maintenance is filed and all sort of defenses are raised in order to ensure that they do not pay maintenance to the wife and children. It is the duty of the husband to ensure that proper maintenance is given to his wife and children because apart from their being a moral obligation, it is also a statutory obligation cast on them by law. It is well settled position in law that if the court comes to the conclusion that there is an attempt not to disclose the real income then adverse inference can be drawn against him.”

The same is also reiterated by the Calcutta High Court in *Swadesh Kumar Paul VS State of West Bengal and Another, (2023) SCC OnLine Cal 3312*. Therefore, in view of

14

the above position of law, it is necessary to draw an adverse inference for taking different stands in every Court.

10. So far as the order of the Appellate Court is concerned, the Court has miserably failed to consider the evidence and goes on observing that the husband is residing in rented house. Merely a person residing in the rented house, that by itself, will not absolve him from paying the maintenance amount, however, modifying the said order from Rs.10,000/- to Rs.5,000/- without there being any cogent evidence on record, in my view, the Appellate Court has miserably failed to appreciate the evidence placed on record. The Court ought to have taken a view by drawing an adverse inference against the husband because before the Appellate Court he has placed on record the affidavit of assets and liabilities, wherein he has shown his monthly income as “not-applicable”. Furthermore, when there is nothing in the cross-examination to rebut the contention of the wife, under such circumstances, the Court

15

ought to have accepted the version of the wife. The findings of the Appellate Court is further surprising that there is no servant working in his shop, that by itself, will not lead to a conclusion that he is not earning anything. As could be gathered from the evidence that the shop of the husband and his brother is in the market place. It is highly impossible that he is not having any source of income. He could have come with clean hands before this Court by disclosing the real income. In the absence of this, and considering different stands taken by the husband, I am of the opinion that the Appellate Court has miserably failed to appreciate the evidence.

11. The learned counsel appearing for the wife has placed reliance on the judgment of the Calcutta High Court in the case of *Mosammat Mamuda Bibi VS. Sk. Maniruddin @ Monirul & Anr. (2005) SCC OnLine Cal 172*, wherein in Para 11 it is stated that the burden lies on the husband under Section 106 of the Evidence Act to prove the income as the source of

16

income is within his special knowledge.

12. So far as the findings of Appellate Court in respect of grant of compensation is concerned, is also perverse, as it was modified only on the ground that the husband is residing in a rented premises. As was discussed above, there is nothing on record to suggest that the wife is not entitled for compensation. The only point on which the Court is correct is not granting the amount of rent, as it has come on record that the wife is residing with her parents in their house. However, so far as the further part is concerned, in respect of return of her Stree Dhan, gift articles and clothes, there is absolutely nothing in the cross-examination of the wife to suggest that it was returned to her. Considering the above facts and circumstances of the case, the case is made out to interfere in the order of the Appellate Court. Hence, the following order:

ORDER

(i) The Criminal Writ Petition No.856/2024 is

allowed;

(ii) The impugned order dated 22/07/2024 passed by the Sessions Judge, Wardha, in PWDV Appeal No.38/2019, is hereby quashed and set aside;

(iii) The Criminal Writ Petition No.1001/2024 is **dismissed;**

(iv) Rule is made absolute in above terms.

[M. M. NERLIKAR, J]