

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 3444 OF 2024.

...Petitioner.

Versus

...Respondents.

Ms. Sarah Kapadia a/w. Ankta Pachouri and Ms. Anoushka Ajoy Thangkhiew i/b M/s. Vesta Legal for the Petitioner.
Mr. Akshay R. Kapadia for Respondent No.1.
Mr. A. R. Metkari , APP for Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : April 25, 2024.

P. C. :

1. Heard.
2. By this petition the challenge is to the order dated 8th November 2023 passed by the Appellate Court in an Application below Exhibit 6 filed in Criminal Appeal No.498/2022 by the petitioner-wife seeking direction to the husband to pay the arrears of maintenance as per the order dated 30th July 2022 passed by Trial Court.

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1 of 13

3. It will be necessary to narrate in brief the facts of the case to understand the unfortunate situation in which the petitioner wife after being reduced to a vegetative state, has to suffer further litigation for the purpose of seeking medical expenses from the respondents. An Application came to be filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (DV Act) on behalf of the petitioner-wife through her father seeking reliefs under Section 18, 19, 20 and 22 of DV Act. It was pleaded that the petitioner and respondent No.1 were married on 20th January 2016 and after the marriage the parties started residing in United Kingdom as the respondent-husband was working there. It was contended that the petitioner-wife had faced domestic violence at the hands of the respondent No.1 and the incidents of domestic violence has been pleaded in the Application. However at this stage it is not necessary to consider the same in detail. It was pleaded that on 6th February 2017 the father of the petitioner-wife received a phone call from respondent No.1 informing him that the petitioner has been admitted to hospital and requires surgery. The father of the petitioner along with his wife and younger daughter reached United Kingdom and thereafter there are certain pleadings as to the conduct of the

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rsk

2 of 13

respondent-husband with the father of the petitioner-wife and his family. It was contended that certain expenses had to be incurred by the family of the petitioner-wife towards the stay and towards the expenses of the petitioner. It was contended that the petitioner was discharged on 15th August 2017 and the option was either to shift her to the matrimonial house or shared household in United Kingdom where she would be looked after by nurses and physiotherapist as she was reduced to completely vegetative state or she should be transferred to a nursing home at United Kingdom. It is pleaded that the family of the petitioner were not happy as there would be only daily care and no physiotherapist available which would have improved her condition. It is pleaded that after much deliberation and discussion it was decided amongst themselves that the family of the petitioner would take petitioner to Mumbai and get her the required treatment for which respondent-husband assured to send a sum of Rs.1,50,000/- towards maintenance to look after the petitioner. It was contended that respondent-husband travelled from UK to Mumbai with the wife when the wife was brought to Mumbai but thereafter did not take proper care and family members who were single handedly looking after the petitioner. It was contended that there was no provision made for meeting medical expenses of the petitioner-

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rsk

3 of 13

wife. DV Application came to be filed on the aforesaid premise and monetary reliefs were sought.

4. To this Application, detailed say was filed by the respondent-husband denying the contentions. It was however admitted that the respondent husband had travelled to India at the same time with the petitioner and her family and used to visit the hospital when he was in India. He has further denied the expenses which claimed to have been incurred by the petitioner's family as all the medical expenses were covered by health surcharge paid by the respondent husband to the United Kingdom Government.

5. The Metropolitan Magistrate under Section 23 of the DV Act considered that the petitioner is suffering from brain hemorrhage due to Arteriovenous Malformation (AVM) and requires medical assistance and further considered that the petitioner is bedridden and is in immediate need of monetary assistance. As regards the income and expenditure of the parties as the petitioner was bedridden there was no question of the petitioner having any source of income. There is statement of expenses which has been tendered by the petitioner detailing medical expenses amounting to Rs.2,08,000/-. The Trial

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rsk

4 of 13

Court also considered the material brought on record which showed that respondent is earning Rs. 5 lakhs per month.

6. The Trial Court noted that though statement of respondent was denial of income the same is improbable as he was a highly qualified Chartered Accountant and was working in United Kingdom. The Trial Court noted the documents on record which shows the salary of Respondent as 34,953 pounds and disregarded the say of the respondent that he has no income of his own. On the basis of available material on record the Trial Court granted interim maintenance of Rs.1,20,000/- per month to the petitioner to be paid from the date of the application till the final decision. As regards the arrears the respondent was directed to pay Rs.1,00,000/- per month towards arrears till the total of arrears of Rs.43,20,000/- was recovered.

7. As against this appeal was preferred under Section 29 of the DV Act before the Appellate Court. However, on an Application for stay filed by the respondent-husband being Criminal Miscellaneous Application No.1792 of 2022, the Appellate Court considered that the petitioner-wife is in need of immediate financial help and if proceedings are stayed it will not be disposed of finally and looking to

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5 of 13

the physical condition of the petitioner, it is necessary to dispose of the matter as early as possible. The prayer for stay of the proceedings was rejected. In the proceedings before the Appellate Court, Application came to be filed by the petitioner-wife seeking a direction to pay arrears of maintenance as per order of 30th July 2022 in which following order came to be passed:

- “1. *Application Exhibit no.6 in Criminal Appeal No.498 of 2022 is partly allowed.*
2. *Appellant no.1 shall pay entire outstanding amount @ Rs.25,000/- per month to the Respondent No.1/wife from the date of application till 31/10/2023 before the trial Court till 31/12/2023.*
3. *The Appellant No.1 shall continue to pay Rs.25,000/- per month to the Respondent till decision of this appeal.*
4. *The amount deposited by the appellant, if any, till today, be adjusted towards arrears of interim maintenance.*
5. *Application Exhibit no.6 in Criminal Appeal no.498 of 2022 is disposed of accordingly.”*

8. Learned counsel for the petitioner has taken this Court through the entire material on record. She would further submit that

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considering the medical condition of petitioner the Trial Court on assessing the income of the respondent-husband has directed payment of Rs.1,20,000/- and to pay Rs.1,00,000/- per month towards arrears of 36 months. This order was not disturbed by the Appellate Court as no stay was granted to the proceedings. She submits that thereafter when application came to be filed seeking maintenance to be paid as per the order of the Trial Court, the Appellate Court though noting that the respondent- husband has not paid a single paisa towards interim maintenance amount has reduced the amount of interim maintenance from Rs,1,20,000/- to Rs.25,000/- to be paid from the date of Application. She submits that it is of utmost importance considering the medical condition of the petitioner that the order of 30th July 2022 be complied by the respondent husband. She would further submit that subsequently application for divorce was filed by the husband which is pending. She would further submit that the decision to bring the petitioner to India was a collective decision which is evident from the fact that the respondent-husband had travelled along with the family to India while bringing the petitioner back.

9. *Per contra*, learned counsel for respondent submits then as per

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rsk

7 of 13

the direction of the Appellate Court directing payment of Rs.25,000/- per month, a sum of Rs.13,25,000/- has been paid. He further submits, pointing out to the various averments in DV Application, that what was claimed by the petitioner was the expenses allegedly incurred by the family which the respondent-husband is not liable to pay. He would further submit that the hospital records would demonstrate that the respondent-husband was visiting his wife daily. He would further submit that the decision to take petitioner to India was taken by the family of the petitioner and against the wishes of respondent-husband as medical expenses could have been taken care of by the health surcharge amount which was paid by respondent-husband in United Kingdom. He would further point out the communication of 3rd April 2019 offering care home in UK and would submit that despite thereof the petitioner's family on their own shifted the petitioner to Mumbai. He would further submit that he himself is presently residing at Bhavnagar and is unable to meet the expenses. He submits that the amount which has been claimed as the medical expenses by the petitioner's family is excessive amount.

10. Considered the submissions and perused the record.

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rsk

8 of 13

11. The medical condition of petitioner-wife is not disputed by either of the parties. While residing in UK the petitioner has unfortunately suffered a serious medical problem which has rendered her into vegetative state. In the DV application there is specific pleading that for the purpose of improving the condition of the petitioner-wife collective decision was taken to shift the petitioner to Mumbai as daily care which was offered in UK did not have any element of physiotherapy for improvement of petitioner's condition. There is specific pleading that the respondent-husband had travelled with the petitioner's family while she was brought to Mumbai. Perusal of the reply would demonstrate the admission of the respondent-husband that he has travelled with the family back to Mumbai when the petitioner was brought here. Irrespective of the position whether there was collective decision or individual decision what is required to be considered as utmost priority is that the petitioner who is suffering from such medical ailment is given proper care and all her medical expenses are met to ensure that her health condition improves. The statement of medical expenses which have been given along with the Application under Domestic Violence Act claims a sum of Rs.2,08,000/- per month towards medical expenses. It will be the matter of evidence as to whether these monthly expenses of Rs.2,08,000/- is

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rsk

9 of 13

actually incurred towards the treatment of the petitioner. However the Trial Court has not granted sum of Rs.2,08,000/- but has granted maintenance of Rs.1,20,000/- per month by considering the income of the husband which was 34,953 pounds. As against this the Appellate Court while rejecting the Application for stay has refused to stay the proceedings also noting that the petitioner is in need of immediate financial help and the matter is required to be disposed of as early as possible. Once there is no stay which has been granted by the Appellate Court the order of the Trial Court dated 30th July 2022 is operational and petitioner is entitled to the interim maintenance of Rs.1,20,000/- per month. Petitioner was therefore within her rights to file Application in the Appellate Court proceedings seeking enforcement of the order as without non compliance of the order of the Trial Court in view of the absence of any stay to the order, the Appellate Court ought not to have entertained the proceedings.

12. The Appellate Court thereafter observed that respondent-husband has not deposited single paise in the Court towards interim maintenance. The error on part of the Appellate Court occurred when the Appellate Court reduced the amount of the maintenance from Rs.1,20,000/- to Rs. 25,000/- per month without any reasoning or

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rsk

10 of 13

finding in support of reduction. Having once declined to exercise its discretionary power and stay the proceedings it was thereafter not open for the Appellate Court to review its own order and to reduce amount of maintenance from Rs.1,20,000/- to Rs.25,000/- per month. The order of the Appellate Court is completely bereft of any findings or reasoning on the basis of which reduction has been directed apart from the fact that the Appellate Court could not have reduced the amount of maintenance once having rejected the Application for stay. The observations that there is not a single paisa deposited towards the interim maintenance and considering the overall facts and circumstances, the observations do not appear to be in consonance with the order which has been passed reducing the amount of maintenance. As regards the issue whether expenses which were incurred by the family are being claimed by way of present interim application, the judgment of the Trial Court does not appear to take the same into account and has only considered the statement of medical expenses and the income of the respondent and has thereafter granted amount of Rs.1,20,000/-. It is well settled that once the quantum of interim maintenance has been granted on assessment of the material on record by the Trial Court, the said finding ought not to be disturbed by the Appellate Court in the absence of any reasoned

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rsk

11 of 13

findings or discussion. The contention of learned counsel for the respondent that the medical facility would have been available in UK is subjective statement and the Courts are not experts to arrive at a decision as to whether the medical condition of the petitioner would require treatment in United Kingdom or India. Merely because the healthcare facility was available free of cost to the petitioner in United Kingdom cannot be a reason to deny the interim maintenance of Rs.1,20,000/- which is required to be incurred towards the medical expenses in India.

13. Having regard to the discussion above the impugned order dated 8th November 2023 is hereby quashed and set aside. The petition is allowed. The petitioners are at liberty to adopt appropriate proceedings for execution of the order of the Trial Court dated 30th July 2022.

14. At this stage, request is made by the learned counsel for the parties that appeal is pending since 2022 and is fixed for hearing on 18th June 2024. Considering that it was Appellate Court's observations itself the appeal is required to be disposed of in view of the medical condition of the petitioner- wife the Appellate Court is requested to decide the appeal expeditiously and in any event within a period of

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rsk

12 of 13

three weeks from 18th June 2024. Both parties submit that they will appear before the Appellate Court on 18th June 2024 and will not seek any adjournments. Both parties agree to cooperate with the Appellate Court in disposing of the proceedings.

[Sharmila U. Deshmukh, J.]

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13 of 13