

(2016) 04 BOM CK 0006

In the Bombay High Court

Case No : Criminal Writ Petition No. 1572 of 2015.

Deepak Laxminarayan Verma

APPELLANT

Vs

The State of Maharashtra through Govt. Pleader High Court,
Criminal appellate Jurisdiction, Bombay and other

RESPONDENT

Date of Decision : 01-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2016) 2 AIRBomRCri 286 : (2016) ALLMRCri 4846

Hon'ble Judges : R.M. Savant, J.

Bench : Single Bench

Advocate : S.I. Shelke, Advocate, for the Appellant; Prakash Dhopatkar a/w
S.S. Vhatkar, Advocates, for the Respondent

Final Decision : Allowed

Judgement

R.M. Savant, J. (Oral) - Rule, having regard to the challenge raised made returnable forthwith and heard.

2. The Writ Jurisdiction of this Court is invoked against the order dated 10-3-2015 passed by the Learned Judge of the Family Court No.4, Mumbai by which order, the application Exhibit 4 filed by the Respondent No.2 herein for maintenance under Section 125 of the Criminal Procedure Code (Cr.PC), came to be partly allowed and the Petitioner who was the Respondent in the said proceedings was directed to pay interim maintenance @ Rs.4000/-per month to the Petitioner wife from the date of the application i.e. 9-7-2012 (wrongly mentioned as 9-7-2014 in the order).

3. The Petitioner and the Respondent No.2 got married on 11-2-2005. The Petitioner husband had filed the Marriage Petition No. A1935 of 2007 for divorce on the ground of cruelty. The said Marriage Petition it seems has been dismissed by the Family Court, Mumbai. The relations between the Petitioner and the Respondent No.2 are estranged on account of which they are leaving separately.

The Respondent No.2 herein i.e. wife filed the application being No.E299 of 2012 under Section 125 of the Cr.PC for maintenance. The said application is founded on the fact that the Respondent No.2 though a law graduate is pursuing post graduate studies in law i.e. LLM and is a student. It was the case of the Respondent No.2 that she has no source of income and that she is somehow maintaining herself with the assistance of friends and well wishers. It was also the case of the Respondent No.2 that the Petitioner is working as a journalist and also has lot of ancestral properties. The Respondent No.2 has claimed maintenance in the sum of Rs.25,000/- per month. In the said application for maintenance the Respondent No.2 filed an application for interim maintenance which is numbered as Exhibit 4. The case of the Respondent No.2 was controverted by the Petitioner. It was the case of the Petitioner that the Respondent No.2 is an Advocate practicing in various courts in Mumbai and earning a good amount as professional fees and therefore she is very well capable of maintaining herself. It was his case that the Respondent No.2 has her own office at the address mentioned in her letter head from where she is carrying out her legal practise. It was further the case of the Petitioner that prior to she becoming an Advocate the Respondent No.2 was a journalist. The Petitioner had therefore sought the rejection of the application for interim maintenance. The said application for interim maintenance it seems was proceeded in the absence of the Petitioner herein and by accepting the case of the Respondent No.2 the Learned Judge of the Family Court No.4 by her order dated 21-11-2013 granted interim maintenance of Rs. 25,000/- per month to the Respondent No.2. It seems that the Petitioner after the said order dated 21-11-2013 was passed applied for its setting aside on the ground that the same was passed without hearing the Petitioner and that the interim maintenance granted was excessive and exorbitant. The said application filed by the Petitioner came to be allowed by the Trial Court i.e. the Learned Judge of the Family Court by order dated 10-9-2014. The application filed by the Respondent No. 2 Exhibit 4 in the said maintenance Petition No.E299 of 2012 came to be rejected and the order dated 21-11-2013 was called back by the Trial Court. The operative part of the order dated 10-9-2014 is reproduced herein under for the sake of ready reference :

"1) The Application stands rejected.

2) The order dated 21-11-2013 stands called back in view of rejection of this application.

3) Call back the distress warrant if issued earlier."

4. The Respondent No.2 herein challenged the said order dated 10-9-2014 passed by the Learned Judge of the Family Court by filing Criminal Writ Petition No.4253 of 2014. A Learned Single Judge of this Court (R.G. Ketkar J.) by order dated 11-22-015 passed in the said Writ Petition set aside the order dated 10-9-2014 and restored the Interim Application No.117 of 2012, Exhibit 4 to the file of the Family court for a denovo consideration of the same. It is pursuant to

the said order dated 11-2-2015 that a fresh adjudication took place and has resulted in passing of the impugned order dated 10-3-2015 by the Learned Judge of the Family Court whereby as indicated above the interim maintenance of Rs.4000/- per month has been granted to the Respondent No.2 herein i.e. Wife from date of the filing of the application i.e. 9-2-2012 (wrongly mentioned as 9-7-2014 in the order). Prior to the said order being passed, the parties were given an opportunity to lead evidence. In the said context it is required to be noted that the Petitioner has not placed any material on record from which the income of the Respondent No.2 wife can be seen. On the other hand the Respondent No.2 has placed on record the income of the Petitioner by way of a statement right from the Assessment Year 2006-2007 to the Assessment Year 20-12-2013, based on the income tax returns which were produced on behalf of the Petitioner.

5. The Trial Court i.e. the Learned Judge of the Family Court Mumbai considered the said application for interim maintenance and as indicated above by the impugned order dated 10-3-2015 has partly allowed the said application to the extent of granting interim maintenance @ Rs.4000/- per month to the Respondent No.2. The Learned Judge has adverted to the fact that though the Respondent No.2 is an Advocate, no material has been placed on record by the Petitioner to come to any conclusion as to the income of the Respondent No.2. The Trial Court has adverted to the income of the Petitioner as was sought to be asserted on behalf of the Respondent No.2 and in support of which a statement has been placed on record by the Respondent No.2. The Trial Court concluded that since the Petitioner is the husband of the Respondent No.2, he is under an obligation to provide the shortfall in the amount of maintenance to the wife and accordingly has partly allowed the said application Exhibit 4 by the impugned order.

6. Heard the Learned Counsel for the parties.

7. The Learned Counsel appearing for the Petitioner Mr. Shelke would seek to make submissions as regards the income of the Respondent No.2 based on inferences to be drawn on the basis of facts which are on record. The Learned Counsel would seek to draw this courts attention to the fact that the Respondent No.2 is an Advocate practicing in the High Court, has office in Borivali which address is mentioned in the letter heads and has been addressing notices to various governmental authorities. The Learned Counsel also sought to draw this courts attention to the evidence recorded which related to the gold ornaments which the Respondent No.2 was wearing on the day when she attended the Court. It was the submission of the Learned Counsel that the Petitioner is a physically disabled person and therefore the interim maintenance fixed at Rs.4000/- in addition to the amount of Rs.1000/- fixed under the Domestic Violence Act is excessive.

8. Per contra, Mr. Dhopatkar the Learned Counsel appearing for the Respondent No.2 would support the impugned order. It was the submission of the Learned

Counsel that the amount awarded as interim maintenance is not such in respect of which the Petitioner can have a grievance having regard to the income of the Petitioner right from the Assessment year 20-06-2007. It was the submission of the Learned Counsel that the Respondent No.2 is also a handicapped person and therefore she needs support as and by way of maintenance. It was the submission of the Learned Counsel that the Petitioner has not placed on record any material to show that the Respondent No.2 has any income as an Advocate.

9. Having heard the Learned Counsel for the parties I have considered the rival contentions. In the instant case, though there are assertions and counter assertions, the Petitioner husband has not placed on record any material to indicate the income of the Respondent No.2 as a practicing Advocate. This was necessary to be placed in view of the fact that it is the case of the Petitioner husband that the Respondent No.2 is capable of earning for herself. It is required to be noted that on the basis of facts which are on record without there being any evidence produced in support of the said facts, the matter cannot be approached by a process of drawing inferences. As indicated above it was the endeavour of the Learned Counsel for the Petitioner to pursue this Court to draw a inference from the facts on record namely that the Petitioner is an Advocate practicing in the High Court and that she has an office in Borivali. The second set of facts is that the Respondent No.2 was wearing some jewellery when she was present in Court on the date of hearing. I am afraid that by a process of drawing inference, the income of the Respondent No.2 cannot be presumed. It has come on record that though the Respondent No.2 is an Advocate practicing in High Court and having office at Borivali which address is found on her letter head. The Respondent No.2 is involved in prosecuting her own personal case, even notices which are on the letter head of the Respondent No.2 if read show that it relates to her own case and not those of her clients. It was therefore necessary for the Petitioner to produce cogent material to indicate the income of the Respondent No.2. The Trial Court in the absence of any such material by observing that it is the obligation of the Petitioner to provide for the shortfall, has fixed the interim maintenance @ Rs.4000/- As indicated above on behalf of the Respondent No.2 a statement of the income of the Petitioner right from the Assessment Year 2006-2007 has been placed on record. In so far as the year 20-13-2014 is concerned, his total income is Rs. 1,27,000/-. The Petitioner is personally present in Court. Prima facie from his appearance it looks like that he is suffering from some physical disability as he is suffering from a form of spondylitis which has altered his gait whilst walking. However, it cannot be lost sight of that the Petitioner is obligated to maintain his wife till such time as they are legally separated.

10. In my view, however, the amount of Rs. 4000/- granted per month having regard to the income which is disclosed in the statement which is annexed to the above Petition at page 257, which is part of the affidavit in reply dated 21-3-2016 filed on behalf of the Respondent No.2, as also having regard to the fact that the Respondent No.2 has already been awarded Rs. 1000/- under the

Domestic Violence Act, it would be just and proper to reduce the maintenance granted by the Family Court @ Rs. 4000/- per month to Rs. 3000/- per month. However, the same would operate prospectively i.e. from April 2016. It is clarified that till March 2016, the Petitioner would be liable to pay at Rs. 4000/- per month. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

11. In view of the disposal of the above Writ Petition, it is not necessary to consider the relief prayed for in the above Criminal Misc Application No. 24 of 2016 as it would be open for the Respondent No.2 to file an appropriate application in respect of the reliefs claimed therein before the Family Court. The above Criminal Misc Application is accordingly disposed of.