

(2018) 02 GUJ CK 0012
In the Gujarat High Court
Case No : 88 of 2017

JAYKUMAR JAYANTILAL FALIYA

APPELLANT

Vs

RIDDHI DINESHBHAI KANAKHRA & ORS

RESPONDENT

Date of Decision : 16-02-2018

Acts Referred:

[Indian Penal Code, 1860](#), [Section 114](#),
[Section 498A](#), [Section 323](#), [Section 406](#), [Section 504](#), [Section 494](#) - <B

Citation : (2018) 02 GUJ CK 0012

Hon'ble Judges : S.G. Shah

Bench : Single Bench

Advocate : BHADRISH S RAJU, NANDISH H THACKAR, MANAN MEHTA

Final Decision : Dismissed

Judgement

1. Heard the learned Advocate Mr.Bhadrish S. Raju for the applicant and learned Advocate Mr. Nandish H. Thackar for the respondent No.1.

Perused the record.

2. The applicant herein is husband whereas the respondent No.1 his wife. The respondent Nos.2 to 5 are family members of the applicant and

therefore, they are formal party so also respondent No.6State which is a formal party. Therefore, the respondent Nos.2 to 5 have remained away

from the proceeding though they are duly served whereas learned APP has nothing to add in a dispute between the husband and wife for

maintenance and other relief under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the D.V. Act").

3. The applicant herein has challenged the judgment and order dated 15.11.2016 in Criminal Appeal No.14 of 2016 by the learned 4th Additional

Session Judge, Jamnagar (hereinafter referred to as "the Sessions Judge"), whereby the judgment and order dated 11.01.2016 passed by the

Additional Chief Judicial Magistrate, Jamnagar below Exhibit6 in Criminal Misc. Application No.452 of 2015 has been confirmed. Such order

dated 11.01.2016 is below Exhibit6 in application under section 23 of the D.V. Act, claiming for interim maintenance pending in trial. It is an

undisputed fact that the respondent - wife has preferred an application under section 12 of the D.V. Act for claiming Rs.10,000/towards rent of

residential facility considering that the applicant is residing in six bedroom house and to get back her stridhan property and also prayed monthly

maintenance of Rs.2,00,000/, considering status and income of the applicant, for her livelihood. The respondentwife has also prayed to restrain the

applicant from alienating or transferring his property. The trial Court has called for report of Protection Officer on such application and after

hearing both side, by impugned order dated 11.01.2016, directed the applicant to pay Rs.20,000/as interim maintenance to his wife from the date

of application i.e. 15.05.2015 and also directed to pay Rs.1,500/towards the cost of such proceeding. Such order has been confirmed by the

Sessions Court when the applicant has challenged it in Criminal Appeal No.14 of 2016.

4. The applicant has challenged such impugned judgment contending that Sessions Court has disposed of this appeal without taking into

consideration the facts pleaded by the applicant on record and that the respondent - wife is earning Rs.15,000/per month by way of fellowship,

therefore, she is not entitled for maintenance. It is also contended that F.I.R. lodged by the respondentwife against the applicant for domestic

violence has been stayed by the Coordinate Bench in Special Criminal Application No.2537 of 2016 and when the Court has refused to vacate

such stay by its order dated 08.07.2015, so refused such stay against further proceeding of complaint filed by the wife, under sections 498(A),

494, 406, 323, 504 and 114 of the Indian Penal Code before Mahila Police Station at Jamnagar being C.R.No.I38 of 2015, based upon same

allegations, no reliefs should have been granted by the trial Court. It is further contended that when criminal proceeding are stayed by the Hon"ble

High Court, the factual details of such criminal complaint cannot be taken into consideration, even for granting the maintenance.

5. However, I do not find any substance in any such submissions, inasmuch as, they are only grounds pleaded in the application and urged before

the Court which would be dealt with separately hereunder but the basic fact remains that at present this revision application is practically against

concurrent finding and decision directing the applicant to pay certain amount as interim maintenance and thereby practically though appeal is

provided against such order by the trial Court, it is an interlocutory order, inasmuch as the trial Court has yet to decide main application for

granting permanent maintenance finally after allowing both the sides to adduce their evidence either to prove their case or to refute the evidence of

other side. Therefore, practically this Court has to verify at such revisional stage that whether on the date of passing impugned order on

11.01.2016 whether the trial Court has committed any irregularity and illegality or not? And at the most again, it is to be verified the whether

decision by the Sessions Court confirming such interlocutory order in appeal is proper and not, since it is alleged by the applicant that the judgment

of the trial Court is a nonspeaking order and therefore needs to be quashed.

6. Thereby what is material to be verified is only to the effect that whether trial Court was justified in awarding interim maintenance based upon

facts, circumstances and evidence available before it, while passing such order on 11.01.2016. Thereby, any development or evidence disclosed

or come into existence or produced on record of this revision or even before trial Court would not be relevant and material to be decided to this

Revision Application. Similarly, any evidence or material if, not produced and disclosed before the trial Court till the date of impugned order dated

11.01.2016, those facts and material, may not be relevant at this stage.

7. In the light of legal position, if we perused impugned judgment by the trial Court, it becomes clear that the trial Court has considered rival

submissions and available material before it, wherein the applicant could not denied that he is having 20% interest in ho tel business and he has

disclosing his taxable income as Rs.4,44,000/-. There are serious allegations regarding habit of the applicant to consume liquor and their beating of

wife. Thereby, when report of Prohibition Officer is also positive, though one complaint under Section 498(A) is stayed by the coordinate bench,

the trial Court has relied upon the decision by the Hon"ble Supreme Court of

India between Inderjit Singh Grewal vs State Of Punjab & Anr

reported in 2012 Cri.LJ 309. So also decision in case of Krishna Bhattacharjee vs. Sarathi Choudhary reported in 2016 Cr.LR 1287, held against

the applicant and thereby, in favour of the respondentwife though she is entitled to maintenance because domestic violence is to be considered as

continuance offence.

8. So far as quantum of maintenance is concerned, the trial Court has relied upon income tax return of the applicant and also considered that the

applicant has refused to disclose details of his immovable properties but when respondentwife has produced several documents to show that the

applicant is having interest in such immovable properties including interest in agricultural land so, also business of real estate in the name of "Jay

Hari Developer", the trial Court has considered Rs.20,000/as reasonable amount towards the interim maintenance for the respondentwife so as to

live in similar status as a wife of the applicant.

9. When such judgment was challenged in appeal, though it is alleged in the revision application that the impugned judgment of Sessions Court is a

nonspeaking order, perusal of judgment by Sessions Court also confirmed that while deciding appeal, Sessions Court has considered the provision

of section 23 of the D.V.Act, has discussed the factual details alleged and submitted by the applicant herein and considering the settled legal

position that wife is entitled to live her life at the same standard of living which she used to live her at matrimonial house after marriage, I could

not find any error, in the judgment by the trial court. Therefore, it cannot be said that the judgment passed by the Sessions Court is perverse or

nonspeaking order because there is no rule to confirm that reason must be in minimum particularly numbers of sentence or page. Even a single

reason is sufficient for determining any issue, when it is purely in accordance with the law applicable to the issue raised before particular Court,

more particularly, when it is supported by factual details on record.

10. So far as the stay of further proceeding of criminal complaint under section 498(A) etc., is concerned, it is clear and obvious that criminal

proceeding and criminal trial altogether has different issues against the right of wife to get maintenance as provided under the D.V.Act and

therefore, though further proceeding of F.I.R. so as to convict the applicant is

stayed, it cannot be said that wife is not entitled to maintenance.

11. So far as the financial help of Rs.15,000/as fellowship to the respondentwife is concerned, it is also clear that all such facts are yet to be

proved before the trial Court but in any case fellowship during study is something like an award for doing some good thing but amount of

fellowship is generally for performing such standard or good things and to facilitate the performer to be independent in such performance but it

cannot be said to be an income for livelihood of person forever. In any case fellowship is a like stipend for a limited period of study and its not a

regular permanent income, so as to disentitle deserted wife to get maintenance. The respondent as therefore, fellowship is only because of her

staunch and for a limited period i.e. for 13 months only and it is not forever. Therefore, only because the wife was getting fellowship for sometime,

it cannot be said that she is not entitle to get maintenance more particular interim maintenance.

12. So far as the presumption regarding immovable properties are concerned, the applicant has submitted that it is held jointly with family members

and he is not getting any income. However, it goes without saying that the applicant who is coparcener and coowner of property, he must be

getting his share of profit from such properties and therefore, it cannot be said that the wife is not entitled to maintenance. All other issues including

reference to deposition of the wife are not material at this stage, since the facts and materials was not available before the trial Court, when

impugned order was passed.

13. Therefore, when the applicant has chance to prove his case and to rebut evidence other side before the trial Court by adducing proper

evidence, at this stage there is no reasons to interfere with the impugned order when the trial is ongoing, at the most, the trial Court may decide

application at the earliest.

14. Therefore, I do not find any irregularity or illegality in the impugned order. Therefore, there is no substance in the revision petition so as to

interfere with the impugned judgment and order since, there is no irregularity or illegality in any manner whatsoever and therefore, revision petition

stands dismissed.

15. In view of order passed in main Criminal Revision Application, the present

Criminal Misc. Application No.30133 of 2017 does not survive,
hence, stand disposed of accordingly.