

(2018) 01 GUJ CK 0003
In the Gujarat High Court
Case No : 624 of 2017

MITINBHAI CHANDRAKANT MEHTA

APPELLANT

Vs

STATE OF GUJARAT & ORS.

RESPONDENT

Date of Decision : 09-01-2018

Acts Referred:

Citation : (2018) 01 GUJ CK 0003

Hon'ble Judges : S.G. Shah

Bench : Single Bench

Advocate : HARDIK H DAVE, ADITYA R GUNDECHA, NARENDRA L JAIN, MANAN MEHTA

Judgement

1. Heard learned advocate Mr.Hardik H.Dave for the applicant and learned advocate Mr.Aditya R. Gundecha with learned advocate

Mr.Narendra L. Jain for the respondent no.2 whereas learned learned APP Mr.Manan Mehta for the respondent no.1 State being a formal party

since dispute is pertaining to maintenance under the Protection of Women from Domestic Violence Act, 2005; ("Domestic Violence Act" for short).

2. Petitioner is husband whereas respondent no.2 is his wife. Respondent -wife has preferred one Criminal Misc. Application No.2184 of 2013

for appropriate reliefs under the Protection of Women from Domestic Violence Act, 2005 before the Court of Judicial Magistrate First Class at

Ahmedabad (Rural), by judgment and order dated 21.05.2016, the Trial Judge has allowed such application and awarded amount of Rs.25,000/-

per month towards maintenance of wife and Rs.10,000/- per month for the maintenance of their minor children under the Domestic Violence Act

as interim maintenance. When such order was challenged by the petitioner - husband in Criminal Appeal No.115 of 2016, 5th Additional Sessions

Judge, Ahmedabad Rural at Ahmedabad has, vide impugned judgment dated 20.05.2017 dismissed the appeal and thereby, order of Trial Court

awarding interim maintenance in favour of the wife and minor children has been confirmed.

3. Being aggrieved by both the above orders against him, petitioner has challenged those orders in the present revision application mainly on the

ground that he is not earning as presumed by the Trial Court while awarding an amount of Rs.35,000/- per month towards maintenance of his wife

and children.

4. Therefore, prima facie, one fact is clear and certain that this is an order of interim maintenance in favour of the wife and minor children and

therefore, Trial Court is yet to decide the main application finally in accordance with law whereby, if petitioner - husband could succeed to prove

his case, an amount of maintenance would be set off and therefore, prima facie, this revision being against interlocutory order, is not maintainable

and/or there is no substance or reason to entertain such revision at such interlocutory stage against interim order of maintenance.

5. However, instead of dismissing the appeal summarily on such legal or technical ground when we allowed husband to argue at length, we will

broadly deal with the issues raised by the husband. The sum and substance of this Criminal Revision Application as recorded hereinabove is only

to the effect that petitioner is not earning as pleaded by the respondent - wife. For the purpose, petitioner was called upon to produce relevant

evidence and income tax return so as to consider his income. In response to such direction, as per order dated 04.12.2017 instead of filing proper

affidavit and documents supported by the affidavit, petitioner has come forward with bunch of xerox in Chinese and other language without

endorsement that it is true copy and it is tried to explain to the Court that his yearly income in china is not more than 5500 chinese yen which may

equivalent to only Rs.54,000/-, and contended that this is only yearly income of the petitioner and therefore, he could not pay an amount of

Rs.35,000/- per month. However, when petitioner has not bothered to produce translated version of such documents or his income tax return in

India and failed to disclose his income by filing an affidavit and when it is alleged by the respondent - wife that petitioner is doing business in China

in partnership with his family member, at this stage, it is difficult to believe an oral statement of an advocate not supported by any affidavit by the

petitioner - husband that he is not having sufficient income to maintain his wife and minor child. As against that, if we peruse the impugned order, it

becomes clear that Trial Court has heard both the learned advocates and considered rival submissions before it. When there is prima facie

evidence before the Trial Court that turnover of the petitioner 's business in China is between 10 to 15 millions U.S. Dollar, directed the petitioner

to pay an amount of Rs.25,000/- towards maintenance of wife and Rs.10,000/- towards maintenance of minor, as interim maintenance till main

petition is decided on merits. It cannot be ignored that in first round, the Trial Court has dismissed the application for interim maintenance and wife

has to chase the matter till High Court and by judgment and order dated 13.01.2016 when Coordinate Bench in Special Criminal Application

No.157 of 2016 directed the Trial Court to consider the application for interim maintenance and to pass appropriate orders in accordance with

law, the Trial Court has passed impugned order. It cannot be also ignored that respondent - wife has produced before the Trial Court as well as

before this Court, the print out of details of the business of the petitioner from their website wherein they have disclosed total annual turnover as 10

to 15 millions U.S.Dollar. Wife has also produced certain communications by E-mail with reference to the business of the petitioner - husband

wherein also there is reference of single business transaction for 12,618 U.S.Dollar.

6. In view of such fact, there is reason to believe that petitioner is having sufficient income to maintain his wife and if he has neglected to do so, he

is supposed to pay maintenance as per impugned order.

7. In view of above facts and circumstances, I do not find any substance in Criminal Revision Application. Hence, this Criminal Revision

Application is disposed of as dismissed.