

(2017) 08 BOM CK 0127
In the Bombay High Court
Case No : 171 of 2016

Mohammed Rafique Mohammed Zafar	APPELLANT
Vs	
Shamimbano W/o Mohammad Rafique, & Ors.	RESPONDENT

Date of Decision : 14-08-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 125](#) — Order for maintenance of wives, children and parents
[Indian Penal Code, 1860](#), [Section 34](#), [Section 498A](#)

Citation : (2017) 08 BOM CK 0127

Hon'ble Judges : V.M. Deshpande

Bench : SINGLE BENCH

Advocate : Mir Nagman Ali, S.O. Ahmad

Judgement

Rule. Rule is made returnable forthwith. Heard finally by the consent of both the parties.

1. Heard Shri Mir Nagman Ali, learned counsel for the applicant and Shri. S.O. Ahmed, learned counsel for the nonapplicants.
2. The present revision is filed by the husband against his wife and two minor children. According to the applicant, the maintenance granted in favour of the nonapplicants is very much on higher side.
3. An application under section 12 of Protection of Women from Domestic Violence Act, 2005 was filed by the nonapplicant no. 1 Shamimbanu and her two minor children, Seema Tabassum, minor daughter, aged about 8 years and Mohammad Saad, minor son, aged about 6 years. The said proceedings were registered as Miscellaneous Criminal Case No. 72/2012 and was allotted to the file of 2nd Judicial Magistrate, First Class of Yavatmal.
4. It is stated in said application, that the marriage between the present applicant and the nonapplicant no.1 was solemnized as per the personal law by

which the parties were governed at Achalpur. From the wedlock, present nonapplicant nos. 2 and 3 were born. By passage of time, there were some bickerings in between the couple which ultimately escalated towards verbal duals and ultimately the wife and children were shown road by the present applicant. That time, the nonapplicant no. 3 was breast a feeding child.

5. A report was lodged by the nonapplicant no. 1 against the applicant which was registered for the offences punishable under sections 498A, 323 read with section 34 of Indian Penal Code. At that time of filing the application under Protection of Women from Domestic Violence Act, 2005, the applicant and his family members were convicted by the learned Magistrate for an offence punishable under section 323 of IPC.

6. An appeal was carried against such conviction. At that time, decision of the application under section 12 of said appeal was pending before the learned Appellate Court. However during the argument, learned counsel for the applicant Shri Mir Nagman Ali makes a statement that the said appeal filed by the applicant and his family members stands allowed and they are acquitted. This aspect is not disputed by the learned counsel for the nonapplicant Shri S.O. Ahmad.

7. By filing the application under section 12 of the Protection of Women from Domestic Violence Act, 2005, non applicants claimed maintenance from the applicant, so also, the shelter. The application was hotly contested by the present applicant by filing his written statement. In the written statement, it was pointed out that prior to the initiation of proceedings under section 12 of Protection of Women from Domestic Violence Act, 2005, a proceedings under section 125 of the Code of Criminal Procedure was filed by the present nonapplicant and in the said proceedings Rs. 1,500/was granted as maintenance favour of the nonapplicant no. 1/wife and Rs. 1,000/to the nonapplicant no. 2 and 3.

8. It is also stated in the written statement that an attempt was made to compromise the dispute, however, in vain, a suit filed by the nonapplicant no. 1 for declaration, declaring the second marriage performed by the present applicant, is null and void, is also dismissed by the competent Civil Court and the appeal against the same is pending.

9. The learned Magistrate conducted a fullfledged trial. After appreciating the pleadings and the evidence and various documents as brought on record by the parties, learned Magistrate partly allowed the application filed on behalf of the nonapplicants thereby directing the applicant to pay amount of Rs. 1,000/to the wife and Rs. 500/to each nonapplicant no. 2 and 3 by way of maintenance from the date of the application.

10. This verdict gave a cause for both applicant and the nonapplicants to approach before the Appellate Court under Section 29 of the Domestic Violence Act. The appeal filed on behalf of the present applicant was registered as Criminal Appeal No. 04/2013 whereas the appeal filed on behalf of the

nonapplicants was registered as Criminal Appeal No. 30/2013.

11. The appeal filed by the applicant was questioning the wisdom of the learned Magistrate in granting the maintenance in favour of the nonapplicant whereas the appeal filed by the nonapplicant was for enhancement of the maintenance. Since the shelter was not granted by learned trial Court, rent was also claimed. The learned appellate Court on 14th April, 2016 by common judgment disposed of both the appeals.

12. The appeal filed on behalf of the applicanthusband was dismissed whereas the appeal filed on behalf of the nonapplicantwife was partly allowed. The learned lower Appellate Court enhanced the maintenance in favour of the wife by Rs. 500/so also, maintenance was granted in favour of the children by enhancement by 500/each. Thus, the wife after the verdict given by the Appellate Court is entitled to received a maintenance of Rs. 1500/whereas the children are entitled to receive an amount of Rs. 1000/per month instead of Rs. 500/so also, the applicant was directed to pay a sum of Rs. 2,000/to the wife towards house rent. Hence, this revision.

13. Learned counsel for the applicant Shri Mir Nagman Ali submits that : i] The maintenance enhancement of Rs. 500/to each of the nonapplicant is excessive.

ii] The applicant has to take care of his family

iii] The applicant is also required to pay maintenance under section 125 of the proceedings.

14. Paternity of the children is not at all disputed by the applicant. It is also not disputed by the applicant that prior to the orders passed by the competent Courts either in application under section 125 of the Criminal Procedure Code or proceedings under section 12 of Protection of Women from Domestic Violence Act, 2005 voluntarily he has shouldered his responsibility as a father.

15. Applicant is a teacher and a teacher always sets standards for the society. Teacher should always be a role model to the society. However, the present applicant has abdicated his duties as a father by not providing a penny to his estranged wife and the children. What was the fault of these two minors ?.

16. The relation between the husband and wife may get soar for many reasons. They have their remedies to get their rights adjudicated before the Court of law. However, it is not expected from a father that by taking a shelter of dispute between him and his estranged wife, he will deny the legitimate right of his son and daughter to get themselves maintained. Every child is having his/her independent right to get himself/herself maintained by father. Their right cannot be denied on account of dispute between their parents.

17. Filing of the application under section 125 of Criminal Procedure Code and claiming the maintenance by filing the application under section 12 of Protection of of Women from Domestic Violence Act, 2005 shows that the applicant/father is

not even respecting his fatherhood and the sufferers are the minors.

18. The learned Magistrate granted maintenance of Rs. 1,000/to wife and Rs. 500/to each of the child. In my view, this maintenance was paltry in view of the fact that the applicant is serving as a teacher in a school which receives grantinaid from the State Government and his salary is more than Rs. 40,000/.

19. Since the maintenance was clearly on the lower side in the light of the salary which the applicant receives, the appeal was filed by the wife and the children. The learned lower Appellate Court has rightly dismissed the appeal filed on behalf of the applicant and has enhanced compensation of only Rs. 1500/i. e Rs. 500/to each of the nonapplicant. In my view, the said enhancement is also on lower side. However, the nonapplicants have not filed any revision against the said order and therefore it has attended finality.

20. A amount of Rs. 2000/in was granted in favour of the nonapplicant by way of rent. Admittedly, they are residing in a city like Yavatmal where it is nobody's case that a decent house can be given on rent by paying a lesser amount than granted in favour of the nonapplicants.

21. Learned counsel for the applicant submits that the applicant is required to maintain his other family including his mother. No details are filed as to what amount is required to incur for their maintenance.

22. Further, according to the learned counsel for the applicant, the applicant's salary is though Rs. 40,000/, he is getting Rs. 17,000/in hand. After hearing the learned counsel for the applicant, it is made clear to this Court that he has taken various loans and in repayment of those loans, his salary is deducted. Under the law, only statutory deduction can be considered while calculating the net income of the husband in determination of the maintenance amount.

23. The learned counsel has further submitted that the nonapplicants are getting Rs. 1500/under the maintenance proceedings. Merely, because the respondent is getting such maintenance amount but when it is found by the Court that the such maintenance is also paltry i.e only Rs. 1500/, in the light of such inadequate amount of maintenance, the submissions, as advanced by the applicant are meritless.

24. Looking to the growing age of the children and skyrocketing prices of essential commodities, even if we look at the maintenance amount i.e granted in favour of the nonapplicants in the Protection of Women from Domestic Violence Act, 2005 proceedings and the application and the maintenance which the non-applicants are receiving will be only Rs. 9,000/. Thus, the applicant has to shell out Rs. 9,000/from his gross salary Rs. 40,000/which in no way can be considered as exorbitant or causing any inconvenience to the applicant. Therefore, revision application is dismissed with cost.

25. In so far as the reaching to the cost is concerned, the attitude of such father has to be bear in mind by the Court. Here is the father who is not ready to shell

out a single naya paisa for the maintenance of his minor children. Every time, the wife and children are required to approach to the Court. Even during the pendency of this proceedings, it was noticed that the present applicant was in huge arrears and only on the directions given by this Court on the part of the amount was deposited.

26. According to the learned counsel for the nonapplicants, arrears were more than Rs. 2,30,000/and under the orders from this Court, the applicant has deposited Rs. 63,000/though the directions was for Rs. 70,000/. Therefore, in my view, this is case where the exemplary cost has to be imposed upon the applicant. Hence, revision is dismissed with cost of Rs. 25,000/.

27. Rule discharged.