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**(2021) 09 BOM CK 0066**

**In the Bombay High Court**

**Case No :** Criminal Writ Petition No. 366 Of 2021(Filing)

Rajendra Shiva Malpekar APPELLANT

Vs

Sujata Suresh Adpaikar RESPONDENT

**Date of Decision :** 30-09-2021

**Acts Referred:**
Protection Of Women From Domestic Violence Act, 2005 — Section 29

**Citation :** (2021) 09 BOM CK 0066

**Hon'ble Judges :** Manish Pitale, J

**Bench :** Single Bench

**Advocate :** A. Bhobe, C. Angle, S. Keny

**Final Decision :** Partly Allowed

# Judgement

Manish Pitale, J

1. By this petition, the petitioner has challenged concurrent orders passed by the Magistrate and the Sessions Court under the provisions of Protection of Women from Domestic Violence Act, 2005.

2. The respondent filed an affidavit in form III claiming interim maintenance from the petitioner. She claimed that there was a religious marriage between the two and that in terms of the requirements of law, the petitioner had co-operated at the stage of first signature, but at the stage when second signature was to be appended to signify the marriage between the parties, he had refused to do so. This was one of the grounds taken by the respondent while initiating proceedings under the aforesaid Act.

3. The affidavit filed on behalf of the respondent was marked as Exh.C1, wherein she claimed specific amounts towards interim maintenance under the provisions of the said Act. The petitioner filed his reply and denied the claims of the respondent. By order dated 15.4.2019, the Magistrate rendered prima facie finding of domestic relationship between the parties and thereupon held that the prayer for interim monetary relief made on behalf of the respondent deserved to

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be partly allowed. The Magistrate directed that the petitioner shall pay an amount of Rs.10,000/- per month to the respondent till the proceedings were pending under the aforesaid Act.

4. Aggrieved by the same, the petitioner filed appeal under Section 29 of the aforesaid Act before the Sessions Court. By judgment and order dated 17.3.2021, the Sessions Court dismissed the appeal, thereby confirming the order passed by the Magistrate.

5. Mr. A. D. Bhobe, learned Counsel appearing for the petitioner submitted that a perusal of the affidavit in form III filed on behalf of the respondent would show that it was not in the form of an application and that it was merely in the format under the Rules framed under the aforesaid Act. It was submitted that the affidavit ought to have been supporting an application for grant of such interim reliefs. The application on record was nothing but the main application filed under Section 12 of the aforesaid Act, seeking reliefs under various heads. It was submitted that even in the said application the amounts separately claimed on behalf of the respondent did not add up to Rs.17000/- towards interim maintenance as claimed by the respondent.

6. Apart from this, it was submitted that a perusal of the impugned order would show that prima facie finding regarding domestic relationship was not supported by proper reasoning and that the Magistrate had found that the respondent failed to justify her needs to the tune of Rs.17,000/- It was also found that she had failed to place on record any documentary proof about the income of the petitioner. It was a matter of the conjecture on the part of the Magistrate to hold that the petitioner earned Rs.32,000/- per month and on that basis the amount of Rs.10,000/- per month was fixed towards interim maintenance. There was no inquiry as to what were the needs of the respondent and there was no inquiry into the quantum of the maintenance that could justify her needs. The Sessions Court failed to appreciate the error committed by the Magistrate. Therefore, the learned Counsel appearing of the petitioner submitted that the impugned orders deserved to be set aside.

7. On the other hand, Mr. S. Keny, learned counsel appearing for the respondent invited attention of this Court to the judgment passed by this Court in the case of Vishal Damodar Patil Vs. Vishaka Vishal Patil, 2009 Cri. L. J. 107, wherein it was categorically held that an affidavit filed in form III appended to the Rules was sufficient for the Magistrate to exercise jurisdiction to consider the prayer of the parties for grant of interim relief and that a separate application was not required. On this basis, it was submitted that there was no substance in the first contention raised on behalf of the petitioner. On the question of quantum of maintenance, it was submitted that the respondent had no source of income and she required respectable amount for survival. It was submitted that the Magistrate had recorded that the petitioner had not denied about he being a Court staff. Since the question of interim maintenance was to be decided, it necessarily had to entail guess work, which was undertaken by the Magistrate.

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On this basis, it was submitted that the Magistrate did not commit any error and that the Sessions Court was justified in confirming the order.

8. Heard learned counsel appearing for the parties and perused the material on record.

9. A perusal of the affidavit in form III filed on behalf of the respondent would show that it indeed is in the format provided as per the form appended to the Rules framed under the aforesaid Act. Since the judgment of this Court in the Vishal Damodar Patil Vs. Vishaka Vishal Patil (supra) categorically holds that such an affidavit would be sufficient for the Magistrate to exercise jurisdiction to consider a prayer for grant of interim monetary relief, the contention raised on behalf of the petitioner that a separate application was warranted in the present case, cannot be accepted and it is rejected.

10. In so far as the question of quantum of the interim maintenance is concerned, at the outset this Court agrees with the prima facie finding rendered by the Magistrate on the question of domestic relationship between the parties. At the stage of considering the question of grant of interim relief, the Magistrate is required to consider the material available on record to reach prima facie finding as regards domestic relationship. The finding rendered by the Magistrate in this regard cannot be said to be erroneous.

11. In so far as the amount of interim maintenance granted by the Magistrate is concerned, this Court finds that in paragraph 20 of the order passed by the Magistrate, there are two clear findings rendered against the respondent. Firstly, that she failed to justify her needs to the tune of Rs.17,000/-. Secondly, she failed to provide any material on record as regards the income of the petitioner. Thereafter, the Magistrate proceeded on the basis that the petitioner was a court staff and then jumped to the conclusion that he should be earning approximately Rs.32,000/- per month.

12. A perusal of the material on record shows that the aforesaid finding rendered by the Magistrate was in the realm of conjecture and that there was no material to reach the finding that the income of the petitioner should be approximately Rs.32,000/-. The Magistrate has proceeded on the basis that the petitioner has not denied the assertion of the respondent that he is working as Court staff. Neither the affidavit in form III filed on behalf of the respondent nor in any other pleading is it stated on her behalf that the petitioner was working as Court staff. Therefore, there was no question of the petitioner denying such fact. Hence, it becomes clear that the Magistrate committed an error on proceeding on the basis that the petitioner was working as a court staff and further that his income should be approximately Rs.32,000/-. There was no material on record to reach such a finding. It is also seen that while directing that the petitioner shall pay an amount of Rs.10,000/- per month towards interim maintenance to the respondent, there is no discussion on the part of the Magistrate as to how the figure of Rs.10,000/- was arrived at.

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13. There is no doubt about the fact that when the question of interim maintenance is to be decided, the concerned court is to proceed on the basis of material available on record and that in such a situation both the parties are expected to come clean as regards their source of income and particularly on the part of the party seeking interim maintenance, as to the financial needs of such a person towards monthly maintenance. Since it was found that in such matters the parties failed to place details on record before the Court, in the case of Rajnesh Vs Neha and another, (2021) 2 SCC 324, the Hon'ble Supreme Court passed a detailed judgment as to the manner in which the parties are expected to place on record affidavits and material so as to assist the Court in arriving at a justifiable figure towards interim maintenance. In the said judgment it has been observed as follows: -

"65. The party claiming maintenance either as a spouse, or as a partner in a civil union, live-in relationship, common law marriage, should be required to file a concise application for interim maintenance with limited pleadings, along with an Affidavit of Disclosure of Assets and Liabilities before the court concerned, as a mandatory requirement. On the basis of the pleadings filed by both parties and the Affidavits of Disclosure, the Court would be in a position to make an objective assessment of the approximate amount to be awarded towards maintenance at the interim stage."

14. In order to facilitate the litigants to place on record appropriate material before the Court when the question of interim maintenance arises, the Hon'ble Supreme Court has given enclosures specifying the formats in which affidavits can be placed on record by the parties.

15. This Court is of the opinion that the Magistrate in the present case failed to insist upon the parties to place on record such affidavits and appropriate material to arrive at cogent findings. As regards the question of entitlement of the respondent towards interim maintenance, the exercise carried out by the Magistrate was based on conjectures and surmises, which is impermissible. The Sessions Court completely failed to appreciate this aspect of the matter while dismissing the appeal and confirming the order passed by the Magistrate.

16. In view of the above, this Court is of the opinion that the petition deserves to be partly allowed by setting aside the orders of the Magistrate and the Sessions Court, with a direction to the parties to place on record affidavits and other supporting material, so as to assist the Magistrate in arriving at a finding regarding the quantum of interim maintenance payable to the respondent.

17. Accordingly, the Writ Petition is partly allowed. The impugned orders passed by the Magistrate and the Sessions Court are set aside. The Magistrate shall now consider the prayer in Exh. C1 afresh by giving an opportunity to the parties to place on record affidavits and other material, as indicated above, so that order can be passed as regards entitlement of the respondent towards interim maintenance. The Magistrate shall proceed expeditiously and, in any case, decide

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the prayer for interim maintenance within a period of eight weeks from today. The parties shall co-operate with the Court of the Magistrate for disposal of the proceedings within the stipulated period of time.

18. Parties shall now appear before the Magistrate on 4.10.2021.

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