

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.100 OF 2023

Mr. Rajkumar Laldhar Sharma, ... Applicant
s/o. Laldhar Sharma,
40 years of age,
r/o. H.No.175/10, Ward No.3,
Shantinagar, Ponda Goa.

v/s.

1. Mrs. Ishita Rajkumar Sharma,
w/o. Rajkumar Laldhar Sharma,
major of age,
r/o. Flat No.201, 2nd floor,
Sadashiv Towers, Kaziwada, Ponda-Goa
Presently residing at Flat No.G-2. Near Sumit
Mount, Behind St. Mary School, Ponda –
Goa.

2. Mr. Laldhar Sharma
Major of age,
r/o. H. No.175/10, Ward No.3, Shantinagar,
Ponda – Goa.

3. Mrs. Kevala Laldhur Sharma,
Major of age,
r/o. H. No.175/10, Ward No.3, Shantinagar,
Ponda – Goa.

4. Mrs. Sudha Vishwakarma,
Major of age,
r/o. H. No.110, Siddhi Niwas, Near Dada
Vaidya School, Kurti, Ponda – Goa.

5. Mr. Birendra Vishwakarma,
Major of age,
r/o. H. No.110, Siddhi Niwas, Near Dada
Vaidya School, Kurti, Ponda – Goa.

...Respondent

Mr A.D. Bhobe with Ms. S. Shaikh, Advocates for the petitioners.

Mr. A. Kamat, Advocate for Respondent No.1.

CORAM: BHARAT P. DESHPANDE, J

DATED: 12th February, 2024

ORAL JUDGMENT:

1. Heard Mr. A.D. Bhobe, learned Counsel for the petitioner and Mr. A. Kamat, learned Counsel for respondent No.1.
2. Rule. Rule is made returnable forthwith.
3. The petitioner is challenging the order passed by the Appellate Authority whereby interim maintenance granted to respondent No.1 by the Trial Court was enhanced by Rs.8000/- without giving any specific reasons.
4. Mr. Bhobe appearing for the petitioner submits that respondent No.1 filed proceedings under the Protection of Women from Domestic Violence Act, 2005 before the learned Magistrate in which application under Section 12 was filed for interim maintenance and other directions. The learned Magistrate after hearing the petitioner and considering the entire material on record including the salary of the petitioner, directed the petitioner to pay an amount of Rs.18,000/- per month to the minor child, till he attains the age of majority. Similarly, the petitioner is directed to pay an amount of Rs.10,000/- to the respondent No.1/wife towards interim

maintenance. Apart from this, the petitioner was directed to pay the rent of the flat wherein respondent No.1 along with the child is residing which is Rs.13,000/- per month.

5. Mr. Kamat appearing for respondent No.1 submits that the petitioner is earning Rs.1,59,000/- per month whereas the interim maintenance granted to respondent No.1 is actually Rs.10,000/-.

6. The order passed by the learned Magistrate is elaborate and considering all the contentions including the interim maintenance granted towards the child, his education, school fees etc., separate interim maintenance is granted to respondent No.1 apart from the payment of rent wherein she resides.

7. Admittedly, the main proceedings are still pending and the Magistrate is duty bound to complete the said proceedings in a time bound manner as provided under the Domestic Violence Act. The learned Appellate Court observed that the liabilities which respondent No.1 is facing qua his salary needs to be considered for enhancement. The learned First Appellate Court failed to consider that the order passed by the trial Court is only allowing interim maintenance and therefore such consideration could be gone into at the time of allowing or deciding the application/proceedings pending before the Magistrate. The reasons for upsetting the order passed by

the Magistrate for interim maintenance, shows that the First Appellate Court considered it as a final order. Be that as it may, apart from payment of rent and the maintenance to the child, respondent No.1 is getting Rs.10,000/- per month as interim maintenance. The question as to whether the maintenance could be considered as inadequate even at the interim stage, was considered by the Magistrate and accordingly the amount was fixed. The First Appellate Court has interfered, without observing that such findings of the learned Magistrate are perverse and illegal. Instead of enhancement of such amount, the learned First Appellate Court could have considered the amount awarded by the trial Court till the disposal of the main proceedings.

8. The circumstances under which the learned Magistrate considered the amount of Rs.10,000/- to respondent No.1 cannot be faulted with at this stage since the matter is pending before the learned Magistrate to decide it finally and on merits.

9. Thus, the enhancement granted by the First Appellate Court to the tune of Rs.8000/- per month to respondent No.1 that too at the interim stage cannot be justified.

10. Accordingly, the petition needs to be partly allowed with regard to such enhancement of Rs.8,000/-.

11. It is expected that the learned Magistrate shall decide the main proceedings as expeditiously as possible and without adjourning the matter any further.

12. With this observations Rule is made absolute in the above terms.

B. P. DESHPANDE, J