



Shakuntala

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.263 OF 2019**

1. Nirjala A. Dabolkar,
33 years of age, Indian National,
Service, House No. 186, Fattawada,
Nerul Bardez, goa

.....PETITIONER

VERSUS

1. Amit Ajit Dabolkar,
31 years of age, Indian National
Service, Resident of H.No.15-H,
Behind N.A.D. Gate, Chicalim, Goa.

2. Mr. Ajit Dabolkar,
61 years of age, Indian National,
Service, and his wife,

3. Mrs. Geeta Ajit Dabolkar,
58 years of age, Indian National,
Housewife,

4. Mrs. Sapna Sandeep Nagvekar,
Wife of Mr. Sandep Nagvekar,
d/o Mr. Ajit Dabolkar,
36 years of age,
Indian National, Business,

5. Mr. Ashish Ajit Dabolkar,
S/o Mr. Ajit Dabolkar,
24 years of age, Indian National
Service, all resident of H.No.15-H,
Behind N.A.D. Gate, Chicalim,
Vasco Goa.

.....RESPONDENTS

Nigel Da Costa Frias, Advocates for the Petitioner.
None appeared for the Respondent.

**CORAM:- BHARAT P. DESHPANDE, J.
DATED :- 01st July, 2024**

ORAL JUDGEMENT.

1. Heard Mr Costa Frias for the applicant. None appeared for

the respondents.

2. The present matter is of the year 2019 and it is kept for final disposal on the admission stage itself.

3. Earlier the respondent filed Criminal Writ Petition No.10/2020 which was tagged along with present petition. A common order was passed by this court on 10.02.2020 which reads thus;

*1. In Criminal Writ Petition No. 10/2020, this Court had passed an order on 06.10.2021, directing the petitioner (husband) to deposit an amount of ₹3,71,000/- within a period of six weeks from the date of the order of this Court. A further direction was given to the petitioner to deposit an amount of *5,000/- per month towards interim maintenance for the child and ₹3,000/- per month for the wife i.e. total of ₹8,000/- per month during the pendency of the said Criminal Writ Petition. It was also made clear that if there was failure on the part of the petitioner, either to deposit the arrears of ₹3,71,000/- or if there was continuous default on two occasions with regard to the monthly deposit, the interim order dated 06.10.2021 would stand vacated.*

2. By order dated 29.11.2021, time period for depositing the amount of 3,71,000/- was extended

by another four weeks. It was made clear that in case of default, the interim order granted on 06.10.2021 would stand vacated.

3. It is an admitted position that no such deposit was made and hence, by order dated 21.01.2022, this Court recorded the fact that due to default on the part of the petitioner, the interim order dated 06.10.2021 stands vacated. By the said order dated 21.01.2022, the aforesaid Writ Petition was directed to be listed today and it was further directed to expedite the proceedings in the Execution Application filed by the respondent in DVA Case No. 10/2016. On the said date i.e. on 21.01.2022, none appeared on behalf of the petitioners and hence, it was made clear that if there is no representation on behalf of the petitioners today i.e. on 10.02.2022, this Court would consider dismissing the aforesaid Criminal Writ Petition in default.

4. Today, when the aforesaid Criminal Writ Petition is called out for hearing, again, none has appeared on behalf of the petitioners, while the respondent is represented by Mr. Costa Frias.

5. In view of the above, Criminal Writ Petition No. 10/2020 is dismissed in default. Criminal Writ Petition No. 263/2019 filed by the

respondent (wife) shall now be listed independently for further consideration on 07.03.2022.

6. If Records and Proceedings have been received by the Registry of this Court, the same shall be sent forthwith to the Court of Judicial Magistrate First Class, Mapusa for facilitating further proceedings in the Execution Proceedings.

4. The present petition is filed by the applicant/wife thereby challenging the impugned order passed by the First Appellate Court in Criminal Appeal No. 171/2017. By the said order, the First Appellate Court reduced the interim maintenance granted in favour of the child from Rs.9000/- to Rs.5000/- which is impugned in the present petition.

5. Mr Costa Frias submitted that in the DVA proceedings filed by the wife, impugned order was passed by the learned Magistrate directing the respondent/husband to pay maintenance of Rs.6000/- to the wife and Rs.9000/- to the child.

6. Respondent challenged the said order by filing appeal wherein the learned Additional Sessions Judge while maintaining the interim maintenance granted to the wife, reduced the monthly maintenance granted to the child from Rs.9000/- to 5000/-.

7. Mr. Costa Frias submitted that there is absolutely no justification for such reduction of the maintenance granted to the child and that the First Appellate Authority simply believed the reply filed by the husband/respondent about his income and expenditure when no such document was placed on record. He submits that the respondent/husband is working abroad and earning handsomely. However, he failed to pay even the arrears and accordingly, another petition no.10/2020 was dismissed.

8. Learned Magistrate after considering the matter in detail and observing that the child needs an amount of Rs.9000/- per month as interim maintenance directed the respondents to pay such amount to the child together with an amount of Rs.6000/- to the wife.

9. Mr. Costa Frias submits that the child needs such amount because he is schooling now and that an amount of Rs.9000/- is necessary for the purpose of education, medicals and other things.

10. He submits that the amount has been reduced by the First Appellate Court only on the statement of the respondent that he requires to spend Rs.35,000/- and his income is only Rs.70,000/-.

11. It was rightly pointed out by Mr. Frias that there is no document placed on record by the respondent to justify his income

as well as expenditure. The Child is now 7 years old and therefore the Respondent being Father is required to contribute an amount towards his maintenance which includes education, medical and other necessities. In absence of any material about the income of the Respondent, reduction of such amount and that too for child seems to be mistake or error on part of the First Appellate Authority.

12. Similarly, it is observed by the First Appellate Court that at that time the child was only 2 years old and thus Rs. 9000/- per month is not required, is considered to be a guess work. The child needs such amount and support from the father, even though, the mother is capable of earning and maintaining the child. The responsibility of father cannot be just reduced only because he has made a statement about income without affidavit. No documents were placed on record to prove his income. The original order was passed by the learned Magistrate in the year 2017 and since the child is now 7 years old, the amount granted by the Trial Court was just and proper and was not required to be interfered with.

13. The reasons of the First Appellate Court in the impugned order therefore, needs interference.

14. Accordingly, impugned order needs to be quashed and set aside by restoring the order passed by the Magistrate.
15. Rule is made absolute in above terms.
16. Parties to bear their own costs.

BHARAT P. DESHPANDE, J.