

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Writ Petition No. 248 of 2015

Syed Khizer s/o. Syed Anees,
Age : 30 years,
Occupation : Labour,
R/o. Sharif Colony, Galli No.16,
Roshan Gate, Aurangabad.

.. Petitioner.

versus

1. Nikhat Parveen w/o. Syed Khizer,
Age : 25 years,
Occupation : Household,
R/o. C/o. Halimabi w/o. Gayasoddin,
House No. 7-3-140, Itwara, Nanded,
District : Nanded.

2. Syyeda Safura d/o. Syed Khizer,
Age : 05 years,
Occupation : Education,
U/G. of Respondent No.1
Her real Mother,
R/o. C/o. Halimabi w/o. Gayasoddin,
House No. 7-3-140, Itwara, Nanded,
District : Nanded.

.. Respondents.

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Mr. Vilas P. Savant, Advocate, for the petitioner.

Mr. G.R. Syed, Advocate, for respondent nos.1 and 2.

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 23RD APRIL 2015

ORAL JUDGMENT :

1. Heard Adv. Mr. V.P. Savant for the petitioner and Adv. Mr. G.R. Syed for the respondents.
2. Rule. Rule made returnable forthwith. By consent, heard finally.
3. The petitioner herein is assailing the order passed by the Principal Judge, Family Court, Nanded, dated 24th January 2015, below Exhibit 5 in Petition No. E-263/2014, thereby granting interim maintenance at the rate of Rs. 7,000/- per month to the present respondent no.1. The learned Counsel for the petitioner fairly submits that, he is not challenging the quantum of maintenance of Rs. 2,000/- per month awarded to respondent no.2 i.e. the daughter of the petitioner and respondent no.1.
4. Upon perusal of the record, it appears that the respondent no.1 herein had filed an application under Section 125 of the Code of Criminal Procedure, 1973. It was alleged that the petitioner herein has got married to respondent no.1 on 4th May 2008. The respondent no.1 was harassed on account of demand of balance amount of dowry. The respondent no.1 had begotten a baby girl on 25-5-2009. She had returned to her matrimonial house but the petitioner herein had accommodated her in a rental premises. That, respondent no.1 was allegedly harassed and

illtreated at the hands of the petitioner. According to respondent no.1, on 31st December 2013, the petitioner had abandoned the company of the respondents and had also refused to maintain them. Hence, they were neglected. The respondents herein were constrained to file a petition under Section 125(1) of the Code of Criminal Procedure, 1973. The respondent no.1 had specifically claimed that the monthly income of the petitioner is Rs. 50,000/-. She had filed documents on record to demonstrate his source of income. After taking into consideration the documents on record and the averments in the complaint, the learned Principal Judge of the Family Court had awarded an amount of Rs. 7,000/- per month to respondent no.1, and Rs. 2,000/- per month, to the daughter towards interim maintenance, by an order dated 22nd April 2014. The learned Counsel for the respondents submits that, the said order was challenged before this Court, however, this Court was not inclined to set aside the order but had expedited hearing of the main Application.

5. The respondent no.1 had then filed a say in the said petition on 8th October 2014. It is pertinent to note that, the main contention of the petitioner was that, he has pronounced Talak towards respondent no.1 and hence after *Iddat* period, she is not entitled to any maintenance. The learned Counsel for the respondents submits that, this is a disputed question of fact and has to be proved by adducing evidence, in view of the judgment of Full Bench of this Court, in the case of ***Dagdu s/o. Chotu Pathan Vs. Rahimbi Dagdu Pathan & others***, reported in **2002(3) ALL MR 265**. After considering the say, the Principal Judge of the Family Court has granted interim maintenance to the tune of Rs. 7,000/- and Rs. 2,000/- per month, to respondent no.1 and respondent no.2, respectively.

6. Heard the submissions of the respective Counsel. The learned Counsel for the petitioner submits that, the respondent no.1 herein has also filed proceedings under the provisions of the Protection of Women from Domestic Violence Act, 2005, which is registered as Misc. Criminal Application No. 56/2014 and is pending adjudication before Judicial Magistrate (F.C.), Nanded. The learned Counsel for the petitioner submits that the petitioner is working as a labourer and has to maintain his parents, second wife and one daughter. The learned Counsel for the petitioner initially had submitted that the petitioner herein is incapable of paying the huge amount of maintenance since he is not liable to pay the said amount on account of divorce pronounced by him.

7. Upon perusal of the documents on record and after hearing the submissions of the respective Counsel, this Court is inclined to modify the order dated 24th January 2015, to the extent that the petitioner shall pay an amount of Rs. 6,000/- per month to the respondent no.1, towards interim maintenance, from the month of May 2015. The quantum of interim maintenance awarded for respondent no.2 is not interfered with and he shall continue to pay the said amount regularly. The petitioner shall also pay arrears of maintenance, if any, within six weeks from today.

8. In the result, the petition is partly allowed.

The petitioner is directed to pay interim maintenance to the respondent no.1, at the rate of Rs. 6,000/- [Rupees six thousand] per month, from May 2015. The petitioner shall deposit the arrears of interim

maintenance, if any, within a period of six weeks from today. It is made clear, that the quantum of interim maintenance for respondent no.2 has not been interfered with.

9. Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV)
JUDGE

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