

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

WRIT PETITION NO. 181 OF 2014

Shri. Santosh Ganapat Pawar,
Age: 31 years, Occu: Service,
R/o.: Manik Nagar, Chinchodi Patil,
Tal. & Dist. Ahmednagar

...Petitioner

versus

Sau. Swati w/o Santosh Pawar,
Age: 25 years, Occu: Household,
Presently R/o: C/o. Balasaheb@ Sanjay
Shripati Kokate, Dhariwal Industries Ltd.,
NH-8, In front of Fajalpur Darga Dayra,
Post: Rayaka, Tal: Vadodara,
Dist. Vadodara, Gujrat.

...Respondent

.....

Mr. P. N. Khedkar, Advocate for petitioner
Mr. R. S. Kasar, Advocate for respondent

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CORAM : N.W. SAMBRE, J.

DATE : 1st DECEMBER, 2015

ORAL ORDER :

The order dated 30/08/2013 passed by learned 3rd Joint Civil Judge, Senior Division, Ahmednagar below Exhibit-19 – an application for grant of interim maintenance under Section 24 of the Hindu Marriage Act, is questioned the present petition.

2. Learned Counsel for the petitioner made two-fold submissions ; (a) that the amount as was ordered under Section 125 of the Code of Criminal Procedure towards maintenance was not taken into account and adjusted while ordering interim maintenance

of Rs. 5000/- per month by the impugned order and (b) looking to the liability of petitioner, the amount of interim maintenance of Rs. 5000/- per month is unreasonable, as according to him, the petitioner is required to maintain his second wife and parents.

3. The above referred submissions are resisted by learned Counsel for respondent-wife on the ground that after the order under Section 125 of Code of Criminal Procedure directing payment of maintenance of Rs.7000/- per month, in Revision at the behest of petitioner, the matter under Section 125 of Cr.P.C. was remanded to Magistrate, who upon appreciation, has passed an order of maintenance of Rs.3500/- per month. He would then urge that the amount of Rs.5000/- per month, as is ordered is by way of interim arrangement and contention of the petitioner can be gone into at the time of deciding proceedings finally.

4. Having bestowed my thoughts over the submissions made by respective learned Counsel, in my opinion, learned Counsel for petitioner was right in pointing out the judgment of the Apex Court in the matter of **Sundeeep Chaudhary vs. Radha Chaudhary** reported in **2000 ALL MR (Cri) 372 (SC)**, so as to canvass that while ordering maintenance under Section 24 of the Hindu Marriage Act, the amount of interim maintenance ordered under Section 125 of the

Cr.P.C. should be adjusted.

5. However, this Court cannot lost sight of the fact that after remand of the matter, in the Revision, the amount is reduced to half and the petitioner was made liable to pay Rs.3500/- per month. The fact about order of interim maintenance passed under Section 125 of Cr.P.C. is prior to the order passed in revision after remand. However, no observations about the adjustment of amount paid under Section 125 of Cr.P.C. are made in the order under challenge.

6. Apart from above, the liability of petitioner and unreasonableness of the order as regards payment of maintenance must have been taken into account by the Court when the amount of Rs.3500/- per month is ordered to be paid under Section 125 of Cr.P.C. However, in the background of non adjustment of amount ordered and paid under Section 125 of Cr.P.C. is concerned, it is worth to grant liberty to petitioner to approach the same Court, who has passed the order under Section 24 of Hindu Marriage Act with prayer for adjustment.

7. As such, the writ petition, in my opinion, stands disposed off with above observations.

[N.W. SAMBRE, J.]