

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2402 OF 2015

Vinay Kumar Harishchandra Singh .. Petitioner
vs.
Smt. Seema Rani Vinay Kumar Singh .. Respondent

Mr. A. S. Rao i/b. Mr. Arun Tiwari for Petitioner.
Mr. D. D. Rananaware for Respondent.

CORAM : M. S. SONAK, J.
DATE: 17 OCTOBER 2016

P.C :

- 1] Heard learned counsel for the parties.
- 2] This petition challenges order dated 16 January 2015 made by the Civil Judge, Senior Division, Vasai, dismissing the petitioner's (husband's) application seeking interim maintenance of Rs.20,000/- per month from his wife and granting interim maintenance of Rs.10,000/- per month to the respondent wife during the pendency of final disposal of M.P. Petition No. 160 of 2013.
- 3] On 2 December 2015, this court made the following order:
 - “1] Not on board. Upon production, taken on board.
 - 2] In case, the Petitioner pays 50% of the arrears in terms of the order dated 16 January 2015 within a period of four weeks from today, there shall be no coercive proceedings against the Petitioner. It is further made clear that there is no stay granted to the payment of interim maintenance at the rate of Rs.10,000/- per month. In case,

50% of the arrears are not deposited within four weeks from today, the Trial Court shall be free to enforce the order dated 16 January 2015.

3] Issue notice to the Respondent, returnable on 15 January 2016. Place the matter on supplementary board”.

4] On 15 January 2016, this Court made the following order:

“1] Mr. Dhananjay, learned counsel files appearance for the Respondent. He seeks for some time in the matter.

2] The learned counsel for the Petitioner states that in compliance with directions contained in the order dated 2 December 2015, 50% of the arrears in terms of the order dated 16 January 2015 have been deposited in the Trial Court.

3] Accordingly, stand over to 5 February 2016 on the supplementary board.

4] The Respondent is permitted to withdraw an amount of Rs.35,000/-, from out of the amount deposited by the Petitioner before the Trial Court.”

5] As of now, the direction to deposit 50% of the arrears towards interim maintenance seems to have been complied with. However, the petitioner in terms of the impugned order dated 16 January 2015, has failed to pay interim maintenance charges of Rs.10,000/- per month, although, there was no interim relief granted by this court in the matter of such payment.

6] Mr. Rao, learned counsel for the petitioner has contended that there is absolutely no material on record to sustain the finding that the petitioner is employed as an Assistant Professor in Sardar Patel Institute of Technology and Engineering earning Rs.60,000/-

per month. He submits that the impugned order refers to the petitioner's alleged bio data, copy of which, was never furnished to the petitioner. He submits that the petitioner resides with his parents and is presently, studying for Ph.D. in Engineering. He submits that his education and maintenance is being financed by his parents, including in particular, his father who is an ex serviceman getting pension of Rs.15,000/- per month.

7] Further, Mr. Rao submits that from the compilation of documents tendered by him, it is quite evident that the respondent wife was employed in HDFC Bank, earning Rs.50,000/- per month. In any case, from the record it is quite clear that the respondent was and continues to work in a jewellery shop earning substantial income. For these reasons, Mr. Rao submits that there can be no obligation upon the petitioner to pay any interim maintenance to the respondent wife. Rather, the respondent wife is duty bound to pay interim maintenance of Rs.20,000/- per month to the petitioner.

8] Mr. Rao has also pointed out that the respondent wife has lived with the petitioner for hardly six months after marriage. The respondent wife falsely instituted criminal proceedings against the petitioner, which proceedings, were eventually withdrawn by the respondent wife. At the stage of withdrawal, the respondent wife has filed affidavits, virtually absolving the petitioner and his parents

of any wrong doings. Mr. Rao submits that there is absolutely no justification for the respondent wife to not reside with the petitioner. In any case, Mr. Rao submits that the respondent is disentitled to claim any maintenance and the impugned order therefore deserves interference.

9] On the other hand, Mr. Rananaware, learned counsel for the respondent wife submits that bio data is very much a part of the record and the same has also been marked as Exhibit 19. He submits that the complaint that the said copy of the bio data was not furnished cannot be entertained, since, such complaint is quite untrue. He further submits that it is inconceivable that the petitioner who possesses degrees of BCA and ME in Electronics and Telecommunications is earning nothing and is only relying upon his parents for his education and sustenance. He points out that there are contradictions in the case of the petitioner when the petitioner says that the petitioner is bearing the liability towards maintenance of his parents as well as payment of EMI Rs.17,600/- towards purchase of premises and at the same time also states that the pension drawn by the petitioner's father is only Rs.15,000/- per month. He states that even the petitioner has abandoned the case of respondent's alleged employment in HDFC and there is really no basis to conclude that the respondent works with any jeweler or earns any income sufficient not only to maintain herself but also to

attend the court proceedings instituted by the petitioner at Mumbai. For all these reasons, Mr. Rananaware submits that the present petition be dismissed.

10] Rival contentions now fall for determination.

11] There is no basis to accept the petitioner's contention that copy of his own bio data was never furnished to him. In the first place, the impugned order records that the respondent wife had filed a bio data of the petitioner along with Exhibit 19. This statement, in the impugned order, cannot be brushed aside lightly. The petitioner has only produced a receipt, which the petitioner says is the receipt issued to him at the time of applying for certified copy of some document. On basis of such receipt, it cannot be concluded that the petitioner did lodge any serious protest with regard to the non furnish of the copy of the bio-data which is a part of Exhibit 19 in the court record.

12] In any case, if the bio-data is perused, it indicates that the petitioner is having qualification of BCA and ME in Electronics and Telecommunications. This position, is clearly not disputed by the petitioner. The bio-data, also refers to the petitioner's work experience as lecturer and professor in Don Bosco Institute of Technology and Sardar Patel Institute of Technology and

Engineering. This position is disputed by the petitioner. However, at least at the interim stage, there seems to be no much force in such dispute which is raised by the petitioner. In case, the petitioner was serious in his dispute, then the least that was expected from the petitioner was to make a true and candid disclosure with regard to the employment status. At least *prima facie*, it cannot be accepted that the petitioner, who has qualifications of graduation and post graduation in electronics and telecommunications is unemployed or that, is pursuing his Ph.D. course with finances from his parents. The petitioner has himself stated that his father is a retired ex serviceman drawing pension of Rs.15,000/- per month. If this be the position, it is really incomprehensible that the petitioner's parents are financing his Ph.D. education and the petitioner is earning nothing.

13] The petitioner, apart from, not being candid to the court has made contradictory statements in his affidavit. The petitioner, on one hand, claims that his maintenance and education is being financed by his parents. On the other hand, the petitioner claims that he has to bear a liability of maintaining his parents as also other expenses of household. The petitioner also makes reference to payment of EMI of Rs.17,600/-, in respect of the flat. In paragraph 8 of the petitioner's application under Section 24 of the Hindu

Marriage Act, 1955 (said Act), in which, he seeks maintenance of Rs.20,000/- per month from his own wife, the petitioner has stated the following:

“8. I say that I am also having the liability on my soldier to maintain to my parents and other expenses of the household and my father retired from the service and getting amount of Rs.15,000/- per month and there is monthly EMI of the flat amount of Rs.17,600/- per month and also I am not having any permanent source of income, therefore, I am unable to maintain myself and my parents and the pension of my father is very less which is not proper to give the EMI of the Flat mentioned in the Cause title of Petition.”

14] The petitioner on basis of certain call conversations held on 10 July 2012 had alleged that the respondent wife is working at HDFC and earning a salary of Rs.50,000/- per month. The call conversation even assuming the same to be true, do not even remotely support such a position. In any case, it does appear that the petitioner has given up this claim and thereafter has tried to urge that the petitioner was employed in a jewellery shop in Bareilly. In this regard, the petitioner has relied upon the communication between his Advocate and the Advocate representing the jewellery shop. The petitioner's Advocate, by communication dated 30 January 2015, made enquiries with Harsahaimal Shimlall Jewellery Shop at Bareilly with regard to the employment of the respondent wife. The Advocate representing the jewellery shop, by his response dated 24 February 2015 has replied that the respondent wife was employed w.e.f. June 2014 till

September 2014 at the jewellery shop and she has received a total sum of Rs.29,632/- during her period of employment.

15] Assuming that such correspondence is to be relied upon, all that it indicates that the respondent, for the period between June 2014 and September 2014 i.e. hardly four months has worked in the jewellery shop and during the said period, has earned some income. The further contention that the respondent continues to work at the jewellery shop is not borne out from this material. In any case, assuming that the respondent wife has worked for a period of 4 months in a jewellery shop, that by itself, is certainly not a reason to deny her interim maintenance. In fact, this circumstance suggests that the respondent is making attempts to provide for her own livelihood and her present claim for maintenance is not merely to spite or harass the petitioner.

16] The impugned order, has rightly appreciated the material on record. There is no legal infirmity either in the award of interim maintenance or the quantum thereof. The petitioner, has been far from candid with the court in the matter of disclosure of his true financial position or for that matter the position with regard to his employment. The petitioner, has set up improbable defences or has even gone to the extent of claiming maintenance from his own wife

on premise, which at least *prima facie*, appears to be false and meant only to render it extremely difficult for the respondent wife to secure some decent maintenance amount. The petitioner has instituted proceedings in Thane when, the respondent wife, resides in Bareilly (UP). The petitioner, seems to be under the impression that he can get away without making any disclosures whatsoever or without being candid to the court realising that it is extremely difficult for the respondent wife, staying at Bareilly (UP) to obtain precise particulars with regard to the petitioner's financial and employment status. In such circumstances, reasonable inferences are permissible and the inferences drawn by the learned trial Judge in the impugned order are reasonable and warrant no interference.

17] In the case of ***Bhuwan Mohan Singh vs. Meena & Ors.***¹, the Hon'ble Supreme Court, in the context of maintenance under Section 125 of the Cr.P.C. has made the following observations at paragraph 2 :

*“2. Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short “the Code”) was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. **The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she***

1 (2015) 6 SCC 353

*would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. **In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied.** There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds."*

[Emphasis supplied]

18] In ***Shamima Farooqui vs. Shahid Khan***², the Hon'ble Supreme Court, in the context of quantum of maintenance and the obligation of the husband to pay the same, at paragraph 14 has observed thus :

"14. Coming to the reduction of quantum by the High Court, it is noticed that the High Court has shown immense sympathy to the husband by reducing the amount after his retirement. It has come on record that the husband was getting a monthly salary of Rs 17,654. The High Court, without indicating any reason, has reduced the monthly maintenance allowance to Rs 2000. In today's world, it is extremely difficult to conceive that a woman of her status would be in a position to manage within Rs 2000 per month. It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home. The statute commands that there have to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. **Be it clarified that sustenance does not mean and can never**

2 (2015) 5 SCC 705

allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right."

[Emphasis supplied]

19] In the present case, there is no clear material on record to support the petitioner's case that it is the respondent wife who has deserted him without any sufficient cause. The affidavits upon which reliance has been placed by the petitioner hardly assist the case of the petitioner. The explanation of the respondent wife that she desired to resume matrimony and therefore, the affidavits were made and the criminal prosecutions withdrawn, cannot be brushed aside at this stage. In any case, what has been awarded is only interim maintenance. The parties are always at liberty to lead evidence in the main matter, in order to make good their respective

claims or case. However, in this case, if the award of interim maintenance is interfered with, in all probabilities the respondent wife will even be deprived of reasonable opportunity to contest the proceedings in Mumbai.

20] In the case of ***Sunita Kachwaha & Ors. vs. Anil Kachwa***³, the Hon'ble Supreme Court in the context of proceedings under Section 125 of Cr.P.C has held that the same are summary in nature. At this stage, it is not necessary for the court to ascertain who was in the wrong and the minute details of the matrimonial dispute between husband and the wife need not be gone into. In this case, it is also held that the mere circumstance that the wife earns something, is by itself, not enough to deny her maintenance. At paragraphs 6, 7 and 8 the Hon'ble Supreme Court has observed thus :

“6. The proceeding under Section 125 CrPC is summary in nature. In a proceeding under Section 125 CrPC, it is not necessary for the court to ascertain as to who was in wrong and the minute details of the matrimonial dispute between the husband and wife need not be gone into. While so, the High Court was not right in going into the intricacies of dispute between the appellant wife and the respondent and observing that the appellant wife on her own left the matrimonial house and therefore she was not entitled to maintenance. Such observation by the High Court overlooks the evidence of the appellant wife and the factual findings, as recorded by the Family Court.

7. Inability to maintain herself is the precondition for grant of maintenance to the wife. The wife must positively aver and

3 (2014) 6 SCC 715

prove that she is unable to maintain herself, in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. In her evidence, the appellant wife has stated that only due to help of her retired parents and brothers, she is able to maintain herself and her daughters. Where the wife states that she has great hardships in maintaining herself and the daughters, while her husband's economic condition is quite good, the wife would be entitled to maintenance.

8. *The learned counsel for the respondent submitted that the appellant wife is well-qualified, having postgraduate degree in Geography and working as a teacher in Jabalpur and also working in the Health Department. Therefore, she has income of her own and needs no financial support from the respondent. **In our considered view, merely because the appellant wife is a qualified postgraduate, it would not be sufficient to hold that she is in a position to maintain herself.** Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance".*

[Emphasis supplied]

21] The aforesaid principles will apply to the present case as well. At the stage of determining interim maintenance, it is not for the court to go into the minute details of matrimonial dispute between the husband and the wife as long as there is *prima facie* material that the wife is not staying away for reasons which are entirely unjustified. There is no question of going into intricacies of the dispute at the interim stage. Similarly, as observed by the Hon'ble Apex Court that merely because the wife is a qualified post graduate is not sufficient to hold that she is in a position to maintain

herself. In fact, from the material brought on record by the petitioner, it is clear that the respondent wife was trying to find out work in shops and on one occasion, she was successful in obtaining some work which earned her hardly any salary and that too, for a period of hardly four months.

22] Therefore, upon taking into consideration the entire material on record, there is no case made out to interfere with the impugned order. This petition is therefore dismissed. The interim order, if any, stands vacated.

23] The trial court to ensure that the petitioner complies with the directions in the impugned order. In case of failure, the trial court to take steps as available in the law for enforcing compliance.

24] The amount deposited by the petitioner before the trial court can be withdrawn by the respondent wife unconditionally.

25] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)