

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.3401 OF 2014

Vyankatesh Vishnu Nalawade .Petitioner

Vs.

Swapnali Vyankatesh Nalawade & ors. .Respondents

Mr.R.K.Hinge, Advocate, for the Petitioner
Mr.Chandan Athani i/b. Mr.Vikas Hinge, Advocate,
for the Respondent No.1
Mr.A.R.Patil, APP, for the Respondent No.2 – State

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 25.02.2016

P.C.

. By this Petition, the order passed by the learned Additional Sessions Judge, Pune in Criminal Appeal No.309 of 2014 rejecting the Petitioner's Appeal against the order of interim maintenance passed by the learned 9th Civil Judge, J.D., Pune in Criminal Misc. Application No.450 of 2014 directing the Petitioner to pay the interim maintenance at the rate of Rs.10,000/- per month to Respondent No.1 is challenged.

2. Submission of the learned counsel for the Petitioner/husband is that neither the Trial Court nor the Appellate Court had considered the fact that the Respondent No.1 is also well educated lady and having ability and capacity to earn the income. Not only that earlier she was also working in the company by name 'Rishi Laser Ltd., Pune' as HR Executive since 10.06.2008. As against it, it is urged that the Petitioner is jobless, having no source of income and in such circumstances, the amount of interim maintenance as awarded by the Trial Court at the rate of Rs.10,000/- per month is not only exorbitant but the said order is also untenable considering the capacity of the Respondent No.1/wife to earn the income.

3. To substantiate his submissions, the learned counsel for the petitioner has relied upon the Judgment of **Mamta Jaiswal (Smt.) vs. Rajesh Jaiswal, 2000 DGLS(AHC)8112** of Madhya Pradesh High

Court wherein the question raised for consideration was whether a spouse who has capacity of earning but choose to remain idle, should be permitted to saddle other spouse with his or her expenditure ? ... While interpreting Section 24 of the Hindu Marriage Act, it was held that such spouse, who is having capacity to earn cannot be entitled for pendente lite alimony.

4. According to the learned counsel for the Petitioner, in the instant case also as the Respondent No.1/wife is not only having capacity to earn but was also earning Rs.40,000/- per month as salary, her application for interim maintenance itself was not tenable. The Trial and the Appellate Court have, therefore, committed grave illegality in allowing her application and directing the Petitioner to pay interim maintenance at such huge amount of Rs.10,000/- per month.

5. To counter this submission, learned counsel for the Respondent No.1 has submitted that the facts of the authority pertain to the Petition for pendente lite alimony under Section 24 of the Hindu Marriage Act whereas in the instant case, the Petition filed by the Respondent No.1 before the Trial Court is in respect of the various acts of the domestic violence committed on or at the hands of the Petitioner. As a result of it, she has lost the job and not only that her educational Certificates to get the other job are also lying with the Petitioner. Moreover, it is urged that despite the order passed by the Trial Court on 09.04.2014, the Petitioner has not handed over all the educational Certificates and documents to the Respondent No.1. Therefore, she even cannot apply for any other job, apart from the fact that already she is suffering from the mental trauma on account of the domestic violence to which she was subjected.

6. As regards the capacity of Respondent No.1 to earn the income, it is urged that she was just appearing for MBA and not completed MBA due to the acts of domestic violence. As against it, the Petitioner is an Engineer and was earning salary of Rs.40,000/- per month. Moreover, in addition to that he is having agricultural land at his native place from which he is getting the income of Rs.10,00,000/- to 15,00,000/- per annum. Therefore, his financial position is sound and he is definitely capable and able to pay interim maintenance at the rate of Rs.10,000/- per month.

7. If one considers the submissions advanced at bar, it is apparent that both the parties are educated and having the capacity and ability to earn the income. As regards the Respondent No.1/wife, though it is true that she was having a job earlier, now, on account of the allegation that due to the acts of domestic violence, she has lost

the job and on account of the mental trauma which is suffered and due to her educational Certificates lying with the Petitioner, she is unable to get the job, it becomes the responsibility of the Petitioner to provide her maintenance at least at this interim stage.

8. It is undisputed that the Petitioner himself is also well educated, being an Engineer and was earlier having the job from which according to the learned counsel for the Petitioner, he was earning Rs.30,000/- per month as salary whereas according to the learned counsel for the Respondent No.1, he was earning Rs.40,000/- per month as salary. Though, it is true that no documentary evidence is produced on record to show that he is having agricultural lands and getting the income of Rs.10,00,000/- to Rs.15,00,000/- per annum from the said lands, the very fact that except for the evasive denial in his reply, the Petitioner has not

come with the specific case as to the actual income he is earning either from the agricultural land or job at present. It does not appear probable that even after losing the job, he will remain idle without doing any work unless and until he had some other source of income. Therefore, it was for him to disclose his real source of income and the actual income. He has not done so therefore, the Trial and the Appellate Court have rightly held that considering the earlier income of the Petitioner, Respondent No.1, their life styles, the interim maintenance at the rate of Rs.10,000/- per month would be just and reasonable sum. In the order of the Trial and the Appellate Court, no jurisdictional error is pointed out so as to warrant interference therein by this Court in its writ jurisdiction. Therefore, the Writ Petition is dismissed.

(DR.SHALINI PHANSALKAR-JOSHI, J.)