

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 122 OF 2017

SURYJAY @ PRIYANSHU GORAKHNATH
KERKAR, THR. HIS MOTHER MRS.
SANGEETA G. KERKAR AND ANR.,

... Petitioners

Versus

GORAKHNATH KERKAR.,

... Respondent

Mr. Sagar Gurudas Dhargalkar, Advocate for the petitioners.

Mr. S. Taleigaonkar, Advocate for the respondent.

Coram:- C. V. BHADANG, J.

Date:- 15th November 2017

P.C.

The challenge in this petition is to the order of interim maintenance passed by the learned Magistrate in an application under Section 125 of Code of Criminal Procedure (the Code, for short).

2. The petitioner no.1, who is a child, born out of the relationship between the petitioner no.2 and the respondent, has been granted interim maintenance at the rate of Rs.5,000/- per month. The petitioner no.2 has not been granted any interim maintenance on the ground that she is not legally wedded wife of the respondent.

3. The learned Counsel for the petitioners has not pressed for the relief of interim maintenance in so far as the petitioner no.2 is concerned and has restricted the challenge in so far as the enhancement of interim maintenance granted to the petitioner no.1 is concerned. It is submitted that the maintenance of Rs.5,000/- per month granted to the petitioner no.1, is inadequate and needs to be enhanced. The learned Counsel for the petitioners has pointed out the observations of the learned Magistrate in which, the learned Magistrate has found that the respondent had knowingly shown his income to be on the lower side. The learned Counsel for the petitioners points out that the maintenance of Rs.5,000/- would be insufficient, looking to the daily needs of the child and particularly, the expenses towards shelter.

4. I have considered the circumstances and the submissions made on behalf of the parties.

5. At this stage, the application for maintenance under Section 125 of the Code is still pending before the learned Magistrate. The order challenged is only one granting interim maintenance. Admittedly, the petitioner no.1 is presently aged two and half years. The quantum of maintenance is to be fixed having regard to the financial ability of the respondent as well as the requirement and the need of the applicant. The petitioner no.2

has not been granted any maintenance. The contention that the child would be entitled to maintenance on account of independent shelter, cannot be accepted. This is because looking to the age of the child, the petitioner no.1 is bound to be in the custody of the petitioner no.2. Looking to overall circumstances and particularly, the need of a child, who is aged two and half years, I do not find that any case for enhancement is made out. Needless to mention that these observations are only of prima facie nature and would not come in the way of the learned Magistrate, while deciding the application under Section 125 of the Code on merits. The petition is, accordingly, dismissed.

C. V. BHADANG, J.

SMA