Dixit

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2270 OF 2016

Pinky Mahendra Kumar Jain,	]	
Aged about 38 years,	]	
Adult, Indian Inhabitant,	]	
R/at 56-C, 2nd Floor, Vasant Villa,	]	
'C' Block, S.B.S. Road,	]	
Colaba Market, Mumbai – 400005.	]	…. Petitioner
Versus		
1. The State of Maharashtra	]	
2. Mahendra Pukhraj Jain,	]	
Aged about 38 years,	]	
Indian, Inhabitant,	]	
R/at C/o. G.P. Jain,	]	
56-C, 2nd Floor, Vasant Villa,	]	
'C' Block, S.B.S. Road,	]	
Colaba Market, Mumbai – 400 005.	]	…. Respondents

Mr. Ajit J. Shobhawat for the Petitioner.

Mr. Dinesh Rathod, i/by Mr. Surendra C. Jadhav, for Respondent No.2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 6TH OCTOBER 2017.

<u>ORAL JUDGMENT</u> :

1. Rule. Rule is made returnable forthwith. Heard finally, by consent of learned counsel for the Petitioner and Respondent No.2.

2. This Writ Petition is directed against the order dated 5^{th} May 2016 passed by Family Court No.2, Mumbai, thereby allowing the application filed by the Petitioner for interim maintenance in the proceedings bearing Petition No.E-199 of 2015, filed for maintenance, under Section 125 of the Cr.P.C.

3. The only grievance raised by the Petitioner is about the quantum of interim maintenance awarded by the Trial Court. It is submitted that the trial Court has granted interim maintenance @ Rs.5,000/- per month, each, to the Petitioner and her two minor school going children. However, the said amount of maintenance is not at all sufficient and it is quite meager, having regard to the income of Respondent No.2. It is submitted that, Respondent No.2 is dealing in the Gold and Silver business. He is having three Shops, situate at Colaba Market. He is the owner in respect of five Flats; out of which, three Flats are situate at Shahid Bhagatsingh Road, Colaba Market, and two Flats are situate at Pasta Lane, Colaba. His monthly income from the business is more than Rs.20,00,000/- per

month and, therefore, it is contended that the Trial Court should have awarded maintenance @ Rs.2,00,000/- per month to the Petitioner.

4. This submission of learned counsel for the Petitioner is, however, strongly resisted by learned counsel for Respondent No.2, by pointing out that Respondent No.2 has produced his Income Tax Returns on record, which show that his income is not more than Rs.15,000/- to Rs.20,000/- per month. The business details, which the Petitioner has given, pertain to the joint family business and not to the business of Respondent No.2 individually. He is working as an employee in the Shop and getting salary only, which is not more than Rs.20,000/- per month. In such situation, the demand for enhanced amount of maintenance, as made by the Petitioner in this Writ Petition, is totally unjustified.

5. The perusal of the impugned order passed by the Trial Court reveals that the Trial Court has considered the Income Tax Returns filed by Respondent No.2 and found that, in the column of *'Balance Sheet'*, his various assets, as on 31st March 2011, have been shown and those assets reveal that he holds *Mangal Keshav Securities of Rs.5,00,000/-; Silver Palace Assets of Rs.5,25,000/-*, *Assets of Mukesh P. Jain to the tune of Rs.13,00,000/-* and the assets of *Citizen Co-operative Bank Ltd. to*

the tune of Rs.4,33,000/-. These assets are very much reflected in the Income Tax Returns itself. There may be some liabilities, as submitted by learned counsel for Respondent No.2, but the Income Tax Returns clearly reflect that Respondent No.2 and his family is dealing in the business and earning substantial income. Therefore, he could have his assets and liabilities.

6. Needless to state, that whatever income is given to the Income Tax Authorities in the 'Returns' may not be necessarily reflecting the true picture and, therefore, Court has to take into consideration the lifestyle of the parties and all other aspects. If one considers the same, then, it goes without saying that, Respondent No.2 has made every attempt to conceal his real income, just in order to avoid the payment of maintenance.

7. The Hon'ble Supreme Court in the case of *Manish Jain Vs. Akanksha Jain, CDJ 2017 SC 352*, has observed, in paragraph No.39, that;

> *"39. …................................. It has now become a matter of routine that as and when an application for maintenance is filed, the non-applicant becomes poor displaying that he is not residing with the family members, if they have a good business and movable and immovable properties, in order to avoid payment of maintenance. Courts cannot, under*

these circumstances, close their eyes when tricks are being played in a clever manner."

8. In the case of *Tejas B. Naukudkar Vs. Urmishta Tejas Naukudkar & Anr., CDJ 2016 BHC 1568*, the learned Single Judge of this Court has observed, in paragraph No.7, that;

> *"7. In case of Shirish H. Garg Vs. Nidhi S. Garg, 2011 (5) Bom. C.R. 372, this Court has held that the ascertainment of the income has to be done judicially and sensibly and not arbitrarily or only arithmetically. In consideration of income contemplated under these proceedings, cognizance need not be restricted to only the numerical figures shown in the Income Tax Returns, nor can such figures be taken for the gospel. The Court is required to take into consideration the attendant circumstances, before the figures stated in the Income Tax Return are accepted as they stand."*

9. In this Writ Petition, the Petitioner has given the details of the expenses of her both the children and it can be seen that she has to pay Rs.65,346/- in the year 2015-16 for the education of her son Harshil and Rs.61,780/- for the education of her other son Sidh. Thus, that the school expenses of the children alone come to the tune of more than Rs.5,000/- per month, each, for both the children. Hence, the interim maintenance awarded by the Trial Court @ Rs.5,000/- per month to the minor children,

can hardly be called as sufficient, as, in the said amount, the Petitioner is unable to cater to their other requirements. The children are growing and, therefore, their development needs need the amount more than Rs.5,000/- per month.

10. At this stage, learned counsel for Respondent No.2 submits that, Respondent No.2 is ready and willing to pay the school expenses, which come to Rs.5,000/- per month, each, to both the children. Accordingly, the interim maintenance awarded to the children needs to be enhanced to Rs.10,000/- per month, each.

11. As regards the interim maintenance awarded to the Petitioner, it is pointed out by learned counsel for the Petitioner that, she is residing in the rental premises and paying rent @ Rs.11,000/- per month and she has paid the Deposit of Rs.50,000/- by borrowing the said amount. In view thereof, the maintenance awarded to her @ Rs.5,000/- per month is also very meager and the same needs to be enhanced to Rs.10,000/- per month, each.

12. Accordingly, the Writ Petition is allowed. The impugned order passed by the Trial Court is modified to the extent that, Respondent No.2

is directed to pay an amount of Rs.10,000/- per month, each, to the Petitioner and both the children towards interim maintenance from the date of filing the application, i.e. 9th April 2015, till decision of the Petition pending before the Trial Court.

13. Rule is made absolute in the aforesaid terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]