

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 4494 OF 2015**

Bharat Kumar Kanji Palicha

..Petitioner

Vs.

Hemlata Bharatkumar Palicha & Anr

..Respondents

Mrs. Prabha Badadare for the Petitioner

Mr. A. Y. Sakhare Senior Advocate, i/b Mr. Y. M. Malavankar for the Respondent No.1

CORAM : R. M. SAVANT, J.

DATE : 6th JANUARY, 2017

P.C.

1 The above Writ Petition takes exception to the order dated 29-10-2015 passed by the Learned Judge of the Family Court No.2, Mumbai, by which order, the application Exhibit 6 filed by the Respondent for interim maintenance came to be allowed and interim maintenance @ Rs.40,000/- per month from the date of filing of the application i.e. 23-3-2015 came to be granted alongwith litigation expenses of Rs.10,000/-.

2 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Petitioner and the Respondent were married, however, the Respondent is staying separately for the last 28 years. It is the case of the Respondent that she has been residing with her parents and brother in the house owned by her father and that is her case that the Petitioner was visiting her whilst they were married. It is her case that she and

her children i.e. one son and daughter were being maintained by her father and brother out of their income, however her father and brother have both expired and that the Petitioner has now no source of income to maintain herself and has therefore filed the proceedings being Petition No.E-121/15 under Section 125 of the Criminal Procedure Code seeking maintenance. In the application the Respondent has set out various assets which the Petitioner owns which are reflected in paragraph 6 of the application Exhibit 6. It is the case of the Respondent that the Petitioner is having hotels at various locations in South India including Munnar in Kerala. It is the case of the Respondent that the Petitioner owns cars as well as scooters. It is also her case that the Petitioner is a member of reputed clubs for whose membership he has paid substantial amounts. The details have been mentioned in the said application Exhibit 6.

3 The said application was replied to on behalf of the Petitioner. It was stated in the said reply that the property held by him are all mortgaged to various banks / institutions. The Petitioner denied the fact that he was involved in the hotel business. In so far as the vehicles are concerned, it was his case that the said vehicles are very old models and do not have market value. It was also his case that he is indebted to the financial institution to the tune of Rs.60 lacs on which amount he is paying interest. It was his case that the Respondent has deserted him and on her own started residing at Mumbai

for the past 25 years without any rhyme or reason.

4 The Learned Judge of the Family Court as indicated above has by the impugned order dated 29-10-2015 has partly allowed the said application and though an amount of Rs.80,000/- was sought by the Respondent as maintenance, the Learned Judge deemed it fit to grant an amount of Rs.40,000/- per month to the Respondent who was the Petitioner before the Trial Court. The Learned Judge has also granted litigation expenses of Rs.10,000/-. The Learned Judge whilst adjudicating upon the said application for interim maintenance has adverted to the various assets which the Respondent claims that the Petitioner owns. The Learned Judge has also adverted to the reply filed by the Respondent wherein he has admitted that he owns various properties and vehicles and wherein he has also admitted he is a life member of sports clubs. The Learned Judge has also observed that the Petitioner has not disclosed as to for what purpose he had obtained loan of Rs.60 lacs from the financial institutions. The Learned Judge further observed that in the absence of the pleadings an inference would have to be drawn that the liabilities were incurred by the Petitioner for his own benefit and not for the benefit of the Respondent wife. The Learned Judge having regard to the reply filed by the Petitioner has observed that the Petitioner has concealed material facts about his income and expenses. The Learned Judge further concluded that the pleadings indicate that the parties belong to affluent class

and that the Respondent would be entitled to the same standard of living that she was accustomed to whilst she was married with the Petitioner. The Learned Judge lastly observed that a person who has incurred liability of Rs.60 lacs can surely be held to be in a position to discharge the said liability. The Learned Judge however has exercised discretion by awarding maintenance of Rs.40,000/- though the amount claimed by the Respondent was Rs.80,000/- per month. As indicated above it is the said judgment and order dated 29-10-2105 which is taken exception to by way of the above Petition.

5 Heard the Learned Counsel for the parties.

6 The Learned Counsel for the Petitioner Mrs. Badadare would contend that the very maintainability of the application under Section 125 filed by the Respondent is in question in view of the fact that the said application has been filed after a period of about 28 years of the Respondent leaving the Petitioners. The Learned Counsel in support of the said contention sought to place reliance on sub Section (4) of Section 125 of the CrPC. It was also the submission of the Learned Counsel that the Respondent is also an income tax payee and is therefore earning some income in respect of which she is paying taxes. It was the submission of the Learned Counsel that the amount of Rs.40,000/- awarded by the impugned order is a bit excessive considering the fact that the daughter is now professionally qualified as a

Chartered Accountant and that the son is also an adult. It was therefore the submission of the Learned Counsel that the impugned order passed by the Learned Judge of the Family Court deserves interference.

7 Per contra the Learned Senior Counsel Mr. A. Y. Sakhare appearing on behalf of the Respondent would support the impugned order. It was the submission of the Learned Senior Counsel that the impugned order does not contain any error of jurisdiction or perversity for it to be interfered by this Court in its Writ Jurisdiction. The Learned Counsel would contend that the Respondent is also a senior citizen of about 63 years of age and her expenses include her medical expenses. It is also his submission that the son though an adult has to be looked after as he is not gainfully employed. It was the submission of the Learned Senior Counsel that at the highest main proceedings can be expedited without interfering with the quantum of maintenance granted by the Learned Judge of the Family court by the impugned order.

8 Having heard the Learned Counsel for the parties I have considered the rival contentions. No doubt the instant application filed under Section 125 has been filed by the Respondent after a lapse of 20 years. However, it is required to be taken note of that the Respondent had not filed an application earlier as she was being looked after by her father and brother who have both expired. It is also an undisputed position that the Petitioner

herein had filed a Petition for divorce in the Court of the Learned Civil Judge Senior Division, Kochi on the ground of desertion. However, the said Petition has now been transferred to the Family Court Mumbai for adjudication, by an order passed by the Apex Court. Hence in so far as the parties are concerned, their marriage is subsisting if that be so the obligation to maintain the wife pending the adjudication of the said proceedings remains that of the Petitioner. The fact that the Respondent had not filed an application for the last so many years, would not dis-entitle her from filing such application if the need had arisen pending the Petition for divorce filed by the Petitioner. If the contention of the Learned Counsel appearing for the Petitioner is to be accepted, then the provisions of Section 125 of the CrPC would turn otiose and resultantly the wife would be driven to destitution and penury. Since the main Petition filed by the Petitioner is pending, the contentions urged on behalf of the Petitioner would undoubtedly be considered by the Family Court at the hearing of the main Petition. Hence the contention urged by the Learned Counsel for the Petitioner as regards the maintainability of the application would have to be negatived.

9 Now coming to the quantum which has been awarded by the Learned Judge of the Family Court as indicated above claim of the Respondent was for an amount of Rs.80,000/- whereas by the impugned order the Family Court has awarded a sum of Rs.40,000/- per month to the Respondent. It is

required to be noted that the Respondent has not produced any material to show her actual expenses i.e. household expenses as also medical expenses. The Trial Court by adopting a rough and ready method as it were, has deemed it appropriate to fix an amount of Rs.40,000/- per month. In my view, the said amount is a bit excessive considering the fact that the Respondent has to look after herself and may be her son who is not gainfully employed or has no source of income. In my view, considering the fact that the Respondent is residing in Mumbai and does not have to spend for her residence as she is staying with her mother and sister in the flat owned by her father and considering the fact that on an average the daily expenses would be in the region of about Rs.500/- per day which would amount to Rs.15,000/- per month and assuming that the Respondent has some medical expenses as also some amount is to be kept aside to take care of the pre-marriage expenses of the daughter an additional Rs.15,000/- over an amount of Rs.15,000/- towards household expenses, would in my view meet the requirements of the Respondent. Hence the impugned order in so far as it awards interim maintenance of Rs.40,000/- is required to be quashed and set aside, the same would stand substituted by the following directions:

- (i) The Respondent to pay an amount of Rs.30,000/- per month from the date of the application i.e. 23-3-2015 as interim maintenance to the Respondent.

(ii) The award of Rs.10,000/- towards litigation expenses is confirmed. (the said amount it seems has already been paid).

(iii) Since the Petitioner during the pendency of the above Petition has paid @ Rs.15,000/- per month, the Petitioner may clear the difference latest by 15-2-2017.

(iv) The Family Court is directed to hear and decide the main Petition i.e. E-121/15 expeditiously and latest by 31-7-2017.

(v) Needless to state that the contentions of the parties on merits are kept open. The Family Court would decide the said Petition on its own merits and in accordance with law.

10 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[R.M.SAVANT, J]