

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

WRIT PETITION NO.4732 OF 2015

Mr. Dinesh Prakash Kawediya	..Petitioner
Versus	
Mrs. Jini Dinesh Kawediya and another	..Respondents

Mr. A. A. Karva for the Petitioner.
Ms. Kalyani Tulankar for the Respondent Nos.1 & 2.

CORAM : R. M. SAVANT, J.
DATE : 12th JANUARY, 2017

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 20.10.2015 passed by the Learned Judge of the Family Court No.3, Pune. By which order, the application for interim maintenance Exh.5 filed by the Respondent herein came to be partly allowed and the Petitioner was directed to pay maintenance at the rate of Rs.3500/- to the Respondent wife and Rs.3000/- per month to the daughter as interim maintenance.

2 The instant application has been filed invoking Section 125 of the Criminal Procedure Code. It was the case of the Respondent herein who was the Petitioner in the application that the Petitioner has business in the name and style of S. K. Jariwala who are involved in the business of providing customary clothes on hire. It was her case that the

Respondent has handsome income from the said business as also a flat in his name. The said application was opposed to on behalf of the Petitioner herein who was the Respondent in the said application. It was the case of the Respondent that he is acting as a commission agent and earns Rs.7000/- to Rs.8000/- per month. The Learned Judge of the Family Court allowed the said application and has fixed interim maintenance in the sum of Rs.3500/- per month to the Respondent wife and Rs.3000/- per month to the daughter. The Learned Judge has adverted to the rising cost of living in today's times as also the expenses that are required to be incurred in respect of a growing child. The daughter of the parties is about 9 years old and is in the 4th standard in school. The case of the Respondent wife in so far as the income from the family business was sought to be negated by relying upon the judgment of the Delhi High Court reported in 2013 Cri.L.J. 1959 in the matter of Lalit Bhola Vs. Nidhi Bhola and another by seeking to buttress the submission that the income of the father cannot be taken as the income of the husband. The Trial Court however did not countenance the said submission on the ground that though the shop and establishment licence stands in the name of the Petitioner's father, uncle and grandmother, it cannot be said that the Petitioner herein does not derive any income from the said business. It appears that the Respondent wife had also filed an

application for maintenance under the Domestic Violence Act which was also allowed in the sum of Rs.1500/- per month and the amount granted in the instant case was in addition to the amount granted under the Domestic Violence Act. It seems that the said application has been withdrawn by the Respondent wife in deference to the fact that at the said point of time the parties were referred for mediation. Hence the amount payable is now only under the instant order by way of interim maintenance.

3 In my view, having regard to the figures fixed by the Trial Court for interim maintenance, it cannot be said that the amount is in any way excessive or exorbitant having regard to the cost of living today. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

4 It is expected that the Petitioner who is in arrears of Rs.37,000/- according to the Learned Counsel for the Petitioner clears the arrears within eight weeks from date. The amount of Rs.20,000/- deposited by the Petitioner pursuant to the order dated 15.02.2016 is permitted to be withdrawn by the Respondents on producing a copy of this order.

[R.M.SAVANT, J]