

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

**CRIMINAL WRIT PETITION NO. 1388 OF 2018
WITH
CRIMINAL APPLICATION NO. 218 OF 2018**

Fahad Abbasi	... Petitioner
Vs.	
Huma Rizvi & Anr.	... Respondents

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Jilajit Sharma for Petitioners
Sayaji D. Nangre for Respondent No.1.
P.H. Gaikwad, APP for the Respondent-State.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 05th JULY, 2018.**

P.C.

1. The petitioner has challenged the orders dated 10th January, 2018 passed by the Family Court granting maintenance as well as the amount towards rent for alternate accommodation.
2. The Respondent No.1 has filed the petition before the Family Court M.J. Petition No. E-122 of 2015 seeking several reliefs under the provisions of Section 125 of Code of Criminal Procedure as well as under the provisions of Protection of Women from Domestic Violence Act 2005. The Respondent No.1 preferred an application for interim relief towards accommodation as well as

the maintenance to her and the child. By order dated 10th January, 2018, the Family Court partly allowed the application and the petitioner was directed to pay Rs.20,000/- per month to the respondent No.1 towards rent for alternate accommodation from the date of application i.e 23rd September, 2015 till the disposal of main petition. In another application for grant of maintenance, the Family Court has passed the separate order of 10th January, 2018 allowing the said application and directing the petitioner herein to pay interim maintenance at the rate of Rs.40,000/- per month to the petitioner and Rs.25,000/- for minor son from the date of application i.e 23rd September, 2015 till the disposal of the main petition.

3. Being aggrieved by the said orders, the petitioner has preferred this petition. It is submitted that the Family Court has committed an error in passing the impugned orders. It is submitted that the respondent had not made out the case to grant the reliefs as prayed in the application. There was no documentary evidence to substantiate the quantum of maintenance awarded by the Family Court. It is submitted that the petitioner is required to pay the amount of Rs.85,000/- per month which is beyond his earning capacity. It is submitted that

the earning of the petitioner were less than the quantum awarded by the Family Court. It is submitted that on merits no case was made out by the respondent-wife for grant of reliefs. It is the case of the petitioner that the respondent wife had left the matrimonial home in the year 2014 with child and since then the child is in the custody of respondent No.1. It is submitted that the petitioner had pronounced Talak and subsequently filed a suit for declaration that the divorce is valid which is pending. It is further submitted that the petitioner who is resident of Delhi was being harassed at the instance of respondent by filing the criminal complaint under Section 498-A, 406 read with 34 of Indian Penal code. Petitioner and his family members were impleaded as accused in the said case. It is submitted that the Court was pleased to grant anticipatory bail to the petitioner and his family members. He further submitted that the respondent No.1 also filed a petition for dissolution of marriage. It is submitted that the respondent is residing with her parents who were financially sound and are capable of maintaining the respondent. It is submitted that the child has been admitted to the school wherein huge school fees are required to be paid. Petitioner relied upon several documents which are annexed to the petition as well as additional affidavit

tendered in the proceeding. It is submitted that since 2014, the petitioner and the Respondent No.1 are residing separately. The respondent has also filed a separate application under Domestic Violence Act which is pending before the Court of learned Magistrate and in spite of that relief under the provisions of the said Act were also claimed in the proceeding before the Family Court. It is submitted that the reasons assigned in the order by the Family Court in respect to the income of the petitioner are contrary to the record. Inference in deciding the quantum of maintenance and the rent as awarded by the Family Court is not supported by any material on record. The respondent has not been able to show any document to support the grant of maintenance and rent as awarded by the court below. The Petitioner was in arrears of Rs.23,80,000/- till January, 2018, out of which the petitioner paid a sum of Rs.5,60,000/- adjusted towards alternate accommodation. It is submitted that he is carrying business of laundry in partnership in the name of M/s Bright and White. The said firm is having laundry contracts in Five Hotels only. He has no other source of income. The respondents have relied upon false list. Most of money is spent on maintenance and salaries, expenses, rent etc. while in Delhi child

was studying at School, where the fees were very reasonable and the child was doing well. Monthly income of petitioner is Rs.61,991/- per month which is less than the maintenance and alternate accommodation charge. It is therefore submitted that the order passed by the Family Court which are challenged in the petition be set aside.

4. Per contra, the counsel for the respondent submitted that there is no reason to interfere the impugned order passed by the Family Court. It is submitted that Court has assigned cogent reason in support of the interim order passed therein. It is submitted that the earning of the petitioner are taken into consideration by the Family Court while passing the impugned orders. The respondent has filed the reply to oppose the reliefs prayed in this petition. In the reply, the details about the income of the petitioner are mentioned which are fortified by the documents annexed to the said reply. It is submitted that the earnings of the petitioner are sufficient to maintain the respondent No.1 and the child and the Family Court has rightly directed the petitioner to pay the maintenance as well as rental amount. It is submitted that the impugned orders are passed by way of interim maintenance and the main proceedings are still pending before the

Family Court. There is no reason to interfere in the said orders. The respondent No.1 has placed on record the bank statement as well as the other details towards the income of the petitioner. It is submitted that the minor son is studying in Ashok Academy and in the year 2014, he was in Fourth Standard and the school fees have been paid since 2014. The details are furnished in the reply. It is also submitted that the petitioner is into laundry business alongwith his father. The laundry business is located at Five Star Hotels all over India. The details of laundry which are located in various hotel are also mentioned in the affidavit in reply. It is contended by respondent that during hearing of the application before family Court the petitioner had produced Bank Statement of ICICI Bank and Bank of India. The respondent has furnished details of deposits in the bank. The respondent had also annexed the copies of school receipts relating to fees of minor son. It is stated that expenses are also incurred towards sports towards son. It is therefore submitted that the contentions of the petitioner are devoid of merits and petition be dismissed.

5. Having heard both the parties and on perusal of the impugned orders as well as documents on record it can be seen that the marriage between the petitioner and the respondent No.1

was solemnized on 4th April, 2004. The application was preferred before the Family Court in the year 2015. The applications seeking interim reliefs were also preferred by the Respondent No.1 and same were allowed by the Family Court by assigning cogent reason. The Court has relied upon the documents on record to grant the interim reliefs. The petitioner's contention is that the said document did not justify the orders and arbitrarily orders passed by the Family Court. It is submitted that the Family Court has arrived at the conclusion which is contrary to material on record.

6. On going through the orders passed by the Family Court granting rent as well as maintenance to the respondent No.1 and minor son it can be seen that the Family Court has considered the requisite materials on record and has passed the said orders. While allowing the said application, it is observed by the Court that at this stage of disputed facts are not required to be considered. It is to be seen whether the wife is unable to maintain herself and her child and whether the husband had failed and neglected to maintain them inspite of sufficient means, whether she entitled for accommodation and interim maintenance as prayed by her. It is further observed that the wife is unemployed

and having no source of income merely being educated lady, it cannot be assumed that she has any source of income. The trial Court has analysed the source of income of the petitioner through laundry business on various cities like Delhi, Gurgaon Agra etc. The trial Court has taken into consideration the business conducted by the petitioner and has also taken into consideration the summarized copy of bank statement of ICICI Bank. The Court also considering the income tax return for the assessment year 2012-13, 2015-16 etc. After analysing the documents on record and considering the submissions advanced by both the parties, the Family Court has proceeded to pass two separate orders which are under challenged in this petition.

7. For the reasons assigned by the Family Court and on considering the documents on record, I do not find any reason to interfere in the impugned orders. The Family Court has considered the interim application for the reliefs sought therein. The Respondent has no source of income and minor child is also required to be maintained. The respondent and her son are dependent on her parents. The family Court had observed that documents on record sufficiently shows that, the petitioner is earning huge income from business. The Court has summarised

that considering all the documents filed on record, considering huge turnover and various investments, expenditures and income capacity, requirements of respondent and minor child, standard of living of both the parties, costs of living, education and other expenses of child and granted maintenance. In the circumstances, the petition is devoid of merits and the same is deserved to be dismissed.

ORDER

- (i) Criminal Writ Petition No. 1388 of 2018 is dismissed;
- (ii) In view of order passed in Writ Petition, Criminal Application No. 218 of 2018 stands disposed of.
- (iii) Petitioner is granted six weeks time to clear the arrears.

(PRAKASH D. NAIK, J.)

Sachidanand
Kuttan Nair

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by Sachidanand
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