

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.150 OF 2018

Bhimrao S/o Shivram Yerge
Age : 45 years, Occ : Service,
R/o CIDCO, Nanded
At present R/o 2/8 LIC Colony,
Near Khadki Railway Station,
Pune.

..PETITIONER

-VERSUS-

Kavita W/o Bhimrao Yerge
Age : 41 years, Occ : Self Employed,
R/o C/o. Hanmant Gangaram Shivpuje,
House No.1-1-1870, Pushpa Nagar,
Pawadewadi Naka, Nanded.

..RESPONDENT

...

Mr.V.R. Dhorde, Advocate for the petitioner.
Mr.G.P. Shinde, Advocate for the respondent.

...

CORAM: V.L. ACHLIYA, J.

DATE : 28.06.2019

ORAL JUDGMENT:

Rule. Rule made returnable
forthwith. By consent heard finally.

2. By this Petition filed under Article 227 of the Constitution of India, the petitioner has challenged the order dated 13.10.2017 passed by Family Court, Nanded in Petition No.E-43/2017. By the impugned order, learned Judge of the Family Court allowed the

application seeking interim maintenance filed by the respondent and directed the petitioner to pay interim maintenance @ Rs.5,000/- per month from the date of filing of the application till disposal of the main Petition. Being aggrieved, the petitioner has preferred this Petition assailing legality and correctness of the impugned order.

3. Heard learned counsel for the petitioner and respondent.

4. Learned counsel for the petitioner assailed the impugned order with contention that the order has been passed mechanically. While passing the order, learned Judge of the Family Court has failed to take into consideration the marriage between the petitioner and respondent was dissolved long back in the year 2007. While passing the order, the Court has observed that the petitioner is earning Rs.10,000/- per month though his monthly income in the month of July, 2017 was Rs.4,756/-. The respondent has suppressed the fact regarding her employment as well as income. She has falsely stated that she is unable to maintain herself. As

per the information obtained under Right to Information Act, it is found that in the month of July, 2017, the respondent was receiving Rs.11,274/- per month. She has suppressed the fact regarding her occupation as well as earning and falsely stated that she has no means of livelihood. The order was obtained by deliberately making false and misleading statement and thereby committed a fraud upon the Court to secure favourable order from the Family Court. It is submitted that in a proceeding filed U/Sec. 125 of the Cr.P.C. seeking maintenance including interim maintenance, the respondent is unable to maintain herself is a major factor to be taken into consideration by the Court. Since the respondent has practiced fraud upon the Court, the impugned order liable to be set aside.

5. It is further submitted that the application seeking maintenance filed by the respondent was finally decided on merit by the trial Court vide judgment and order dated 8th February, 2019. The application filed seeking maintenance has been rejected on merit by holding that the petitioner i.e.

present respondent has failed to prove that the petitioner i.e. original respondent has refused or neglected to maintain her and she is unable to maintain herself. It is further pointed out that the Court has also observed that the respondent-applicant has not approached with clean hand and suppressed the material facts about her qualification, occupation and income. The Court has also observed that the application seeking maintenance was filed after a period of 10 years of decree of divorce passed dissolving marriage between petitioner and respondent.

6. Learned counsel for the respondent fairly conceded that the trial Court has finally decided the application moved U/Sec. 125 of the Code of Criminal Procedure and dismissed the same vide judgment and order dated 08.02.2019 passed in the matter. However, learned counsel submits that the respondent may challenge the judgment and order passed by the trial Court.

7. I have carefully considered the submissions advanced in the light of record and proceedings and more particularly the

order dated 13th October, 2017 passed by the trial Court granting interim maintenance as well as final judgment and order dated 8th February, 2019 passed in F.A. No.E-43/2017 to reject the application.

8. In my view the order to grant interim maintenance has merged into judgment and order dated 8th February, 2019. The order dated 13th October, 2017 was the interim order. The judgment and order dated 8th February, 2019 spell out that the trial Court has framed the following points and recorded the findings thereto as under :-

	Points	Findings
1.	Does petitioner prove that respondent has refused or neglected to maintain her ?	Yes
2.	Does petitioner prove that she is unable to maintain herself ?	No
3.	Does petitioner proves that respondent has sufficient means to provide maintenance to her ?	Yes
4.	Is petitioner entitled to maintenance ?	No
5.	What order ?	As per the final order

9. Perusal of the reasons recorded

spell out that on due consideration of the oral and documentary evidence adduced by the petitioner-original applicant as well as the respondent- original non-applicant, the applicant has failed to prove that the non-applicant has refused or neglected to maintain her. It is further held that the applicant has failed to prove that she is unable to maintain herself. The order of interim maintenance was passed to enable her to maintain herself pending adjudication of the proceedings on merit. The order of granting interim maintenance has merged into final order passed in the matter. On failure to prove the case of refusal and neglect on the part of the petitioner and the respondent to prove inability to maintain herself, the respondent is not entitled for maintenance from the petitioner.

10. Apart from the fact that the order granting interim maintenance has merged into final order passed in the matter, the impugned order granting interim maintenance also not sustainable in law in the light of the reasons recorded in the order dated 13th October, 2017. The interim maintenance cannot

be claimed as of right. While dealing with the application seeking interim maintenance, the Court is expected to exercise its discretion in a judicious manner. If the facts and circumstances of the case warrant passing of interim order of maintenance then only such orders are expected to be passed. Considering the pleadings and evidence, if it appears to Court that the person seeking interim maintenance has sufficient means to maintain himself or herself then the Court may refused to entertain such application. In the case in hand, it is apparent from the order passed in the matter that there was evidence to show that the respondent i.e. original applicant in the proceeding had sufficient means to maintain herself. It is observed in the order that the respondent is working as LIC agent and earning Rs.1,20,000/- per year. Thus although there was evidence to show that respondent was earning Rs.10,000/- per month still learned Judge has passed the order directing the petitioner to pay interim maintenance @ Rs.5,000/- per month from the date of filing of application on the basis of income of the petitioner. The considerations which are

applied for awarding interim maintenance cannot be made applicable while awarding interim maintenance. While dealing with application seeking interim maintenance, the Court is expected to restrict its scope of inquiry as to bare necessity of the person to maintain himself or herself pending adjudication of main application. The considerations like living standard, status of the parties etc., are required to be taken into consideration while dealing with adjudication of case on merit. In that view the impugned order is not sustainable.

11. In the result, the Petition deserves to be allowed and impugned order liable to be set aside. Accordingly, the Petition is allowed in terms of prayer clause (B). Petitioner is granted liberty to withdraw the amount if any lying deposited and not withdrawn by respondent.

12. Rule made absolute in above terms.

[V.L. ACHLIYA]
JUDGE